

***United States Court of Appeals
for the Second Circuit***



APPENDIX

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

77-1507

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UNITED STATES OF AMERICA,

Appellee,

-against-

JAMES C. THWEATT,

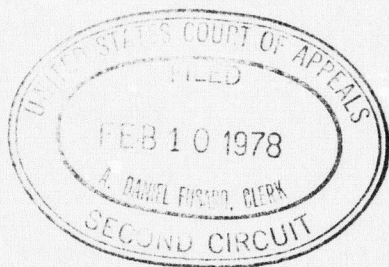
Appellant.
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To be argued by
RICHARD A. GREENBERG

Docket No. 77-1507

APPELLANT'S APPENDIX

ON APPEAL FROM A JUDGMENT
OF THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK



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CRIMINAL DOCKET - U.S. District Court

PETTY OFFENSE PO

JUDGE/MAGISTRATE Assigned U.S.

MID OFFENSE MO

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THWEATT, JAMES C.

Case Filed
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MID OFFENSE MO

Disp. Sentence

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District Office

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Docket No.

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CASE NO.

BAIL • RELEASE

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Date

☐ Bail Not Made☐ Status Changed

(See Docket)

U.S. TITLE/SECTION

OFFENSES CHARGED

ORIGINAL COUNTS

18:1001-4991

False statements.

1-36

18:641-4310

Embez. of public money & property.

37&38

II. KEY DATES & INTERVALS

ARREST or

INDICTMENT

ARRAIGNMENT

TRIAL

U.S. Custody Began

High Risk Date

Information

☐

1st Plea

Trial Set For

Voor Dire

Summons Served

Indict. Waived

8-4-77

NG G NOL

Trial Began

J

First Appearance

In Charging District

Superseding

☐ Indict/Info ☐

Final Plea

NG G NOL

9-26-77

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Trial Ended

Disposition of Charges

☐ Convicted☐ Acquitted☐ Dismissed☐ On Government's M

MAGISTRATE

Search Warrant

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Return

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ATTORNEYS

Defense: [] OJA [] Bar [] Waiver [] Set [] None [] Other

Steven M Schatz
791-0037Martin Weisfuse, Esq.
Delson & Gordon

210 PARK AVE 1292 661-9800

7-28-77 Filed indictment.

8-4-77 Deft. (atty.present) Deft. requests anthother atty. and therefore the Judge directed a plea of not guilty. Deft. notified to have atty. contact chamber as soon as possible. Ordered photographed and fingerprinted. R.O.R. Case assigned to Judge Ward for all purpose. Goettel, J.

8-15-77 Filed NOTICE OF APPEARANCE of Delson & Gordon.

8-22-77 PRE-TRIAL CONFERENCE HELD. Trial date set for 9-26-77 at 10:00 AM in courtroom 35. R.O.R. Cont'd. WARD, J.

9-15-77 PRE-TRIAL CONFERENCE Held.

9-19-77 Filed Govt's Affidavit of JEFFREY E. LIVINGSTON in support of the application of the U.S. Atty for an order authorizing the IRS to disclose in come tax returns in judicial proceedings.

DATE	IV. PROCEEDINGS (continued)	PAGE TWO	V. EXCLUDABLE DELAY			
			Interval Section II (a)	Start Date End Date (b)	Ltr. Code (c)	Total Days (d)
9-19-77	Filed ORDER Authorizing the Commissioner of the IRS to dis- close to the U.S. Atty tax returns and taxpayer return infor- mation of. the deft. Further ordered that this order and all proceedings concerning said order and applications shall be sealed and impounded by the Clerk of the Court, and not to be unsealed without further order of this court. PALIMERIE, J.					
9-27-77	Filed Govt's Proposed examination of Prospective jurors.					
9-27--77	Filed Govt's MEMORANDUM OF LAW in support of the admissibility of evidence relating to certain rental payments.					
9-27-77	Filed Financial Affidavit - CJA 23.					
9-26-77	Trial commence ; jury empanelled.					
9-27-77	" cont'd.					
9-28-77	" cont'd.					
9-29-77	" cont'd.					
9-30-77	" cont'd.					
10-11-77	Filed Govt's Requests to Charge.					
10-3-77	Trial Cont'd.					
10-4-77	" "					
10-5-77	" "					
10-6-77	" "					
10-7-77	" "					
10-10-77	" "					
10-11-77	Trial cont'd; deft's oral motion to dismiss counts 1-37 denied, and decision reserved as to count 38. WARD, J.					
10-14-77	Filed Govt's SUPPLEMENTAL REQUESTS TO CHARGE.					
10-12-77	Trial con't.					
10-13-77	Trial con't. Jurors excused until Wed. Oct, 19 at 9:30 A.M.					
10-14-77	Trial con't. Atty's present to review requests to charge and other legal matters. Deft's motion to dismiss count 38, denied Ward.J. Deft's renewed motion to dismiss counts 1-37 denied. Ward.J.					
10-19-77	Trial cont'd. Jury deliberated. Jury sequestered.					
10-20-77	Trial " " " Jury Verdict(Partial), GUILTY on CTS. 1-19; deft's motion for mistrial on Cts. 20-38 granted. <u>BAIL PENDING APPEAL; \$15,000 PRB secured by \$1,000 cash. Travel</u> <u>Limits to include Continental U.S.A. (48 mainalnd states).;</u> <u>condition; If deft. away from home more than three nights he</u> <u>will notify his counsel.</u> Deft. given until Oct. 25, 1977 by 5:00 P.M. to post bail; ROR until bail is posted. Sentence Date: Nov, 22, 1977 at 9:30 a.m. in Room 601 PSI ord.WARD.J.....					
10-25-77	Filed Appearance Bond in the Sum of \$15,000.00.					
11-10-77	Filed transcript of record of proceedings, dated, 9-26/9-30, 10-3					
11-10-77	Filed transcript of record of proceedings, dated 10-4/10-7, 10-10					
11-10-77	Filed transcript of record of proceedings, dated 10-11/10-14, 10-19/10-20					
11-21-77	Filed Deft's SENTENCING MEMORANDUM -					

FINE AND RESTITUTION PAYMENTS.

DATE	RECEIPT NUMBER	C.D. NUMBER	DATE	RECEIPT NUMBER	C.D. NUMBER

DATE	PROCEEDINGS (continued)	V. EXCLUDABLE DELAY			
		(a)	(b)	(c)	(d)
	(Document No.)				
11-22-77	Filed JUDGMENT AND PROBATION/COMMITMENT ORDER - The deft is committed to the custody of the Atty Gen for impr for a period of TWO (2) YEARS on count 1 and TWO (2) YEARS on each of counts 2-19. COUNTS 2-19 are to run concurrently with count 1. Deft shall become eligible for parole, under 18, U.S. Code Section 4205 (b) (2), at such time as the Parole Commission may determine. Deft is released on bail pending appeal. WARD, J. (all copies issued).				
11-22-77	Deft's bail pending appeal is modified as follows: \$30,000. P.R.B. secured by the same \$1,000 cash previously posted . Bond to be co-signed by the deft's wife. Deft's bail limits are the continental U.S.A. and if the deft. is away from home more than one night he will notify his counsel of his location, address & telephone number. His counsel will immediately notify the Assist U.S. Atty of this fact. WARD, J.				
11-22-77	Filed PERSONAL Recognizance Bond pending appeal in the sum of \$30,000.00 sucured by \$1,000.00 Cash signed CLERK.				
12-1-77	Filed Deft's NOTICE OF APPEAL to the 2nd Circuit of the U.S..C.A., from the judgment entered on 11-22-77. (mailed copies and issaed.).				
12-19-77	Filed Notice that the original record has been certified and transmitted to the U.S.C.A. 2nd Circuit.				
1/5/78	Filed transcript of record of proceedings, dated 8-22-77				
1/5/78	Filed transcript of record of proceedings, dated 8-26-77				



vThweatt
/19

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AFTERNOON SESSION

2:00 P.M.

(In open court - jury present)

CHARGE OF THE COURT

Judge Ward

THE COURT: Good afternoon, everyone.

Ladies and gentlemen, we come now to that stage of the case where you and I do our part in the administration of justice.

Your role is to pass upon and decide the factual issues. As I said earlier in the case you are the sole and exclusive judges of the facts. You pass upon the weight of the evidence. You determine the credibility of the witnesses. You resolve such conflicts as there may be in the evidence and you draw such reasonable inferences as may be warranted by the testimony and by the exhibits in the case.

My function is to instruct you as to the law applicable to the case. It is your duty to accept the law as I state it to you in these instructions and to apply the law to the facts as you find them.

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With respect to any fact matter it is your recollection and yours alone that governs. Anything that counsel for the government or for the defendant may have said with respect to matters in evidence or as to any factual matter, whether stated in a question in argument or in their summations is not to be substituted for your own independent recollection.

I have indicated previously, and I state again, that the statements of counsel do not constitute evidence. So too anything I may have said during the course of the trial or may have referred to during the course of these instructions with respect to any matter in evidence or as to any factual matter is not to be taken in lieu of your own recollection.

Should you require assistance with regard to any testimony or with regard to any portion of my charge you may request that any portion of the testimony or any portion of my charge be read back to you. You will then be brought back into the courtroom and the portion of the testimony or the portion of the charge which you request will be read to you.

In the same vein, should you wish to see any exhibits which are in evidence or should you wish to see the indictment you may call for any of these things

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2 and they will be sent into the jury room.

3 You are to perform your final duty in an
4 attitude of complete fairness and impartiality. You
5 are to appraise the evidence calmly and deliberately
6 and without bias or prejudice with respect to either
7 the government or the defendant as parties to this
8 controversy.

9 This case is important to the government.
10 Equally it is important to the defendant. Let me add,
11 the fact that the prosecution is brought in the name of
12 the United States of America entitles the government to
13 no greater consideration than that accorded to any
14 other party to a lawsuit.

15 By the same token, it is entitled to no
16 less consideration. All parties, whether government or
17 individuals, stand as equals before the bar of justice.

18 James Thweatt has pleaded not guilty.
19 Therefore, the government has the burden of proving the
20 charges against him beyond a reasonable doubt. It is
21 a burden that never shifts and remains on the government
22 throughout the entire trial.

23 A defendant under our system of law does
24 not have to prove his innocence. On the contrary,
25 he is presumed to be innocent of the charges contained

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in the indictment. The presumption of innocence was in his favor at the start of the trial and continues in his favor throughout the trial. It is removed only if and when you are satisfied that the government has sustained its burden of proving the guilt of the defendant beyond a reasonable doubt.

What is a reasonable doubt? A reasonable doubt is such a doubt as would cause prudent men and women to hesitate to act in matters of importance to themselves. It is a doubt which a reasonable person has after carefully weighing all the evidence.

A reasonable doubt is one which appeals to your reason, your judgment, your common sense and your experience. A reasonable doubt is not caprice, whim or speculation. It is not an excuse to avoid the performance of an unpleasant duty. It is not sympathy for the defendant or for his family. Vague, speculative or imaginary qualms or misgivings are not reasonable doubts.

It is not necessary for the government to prove the guilt of a defendant to a mathematical certainty or beyond all possible doubt. If that were the rule few men, however guilty they might be, would be convicted.

The reason is that in this world of ours

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2 it is practically impossible for a person to be absolutely
3 certain of any controverted fact which by its nature is
4 not susceptible of mathematical certainty.

5 In consequence, the law is such that
6 in a criminal case it is enough that a defendant's guilt
7 be established beyond a reasonable doubt, not beyond
8 all doubt.

9 As I told you when you were being selected,
10 the indictment is not evidence. It is a technique or
11 manner by which persons accused by a grand jury of
12 crimes are brought into court and then their guilt or
13 innocence is determined by a trial jury such as you are.

14 An indictment has no evidentiary value.
15 It does not constitute proof or evidence. It is merely
16 an accusation, a charge.

17 The indictment in this case charges the
18 defendant, James C. Thweatt, with making and assisting
19 others in making false statements in connection with
20 a program which was funded in part by the Law Enforcement
21 Assistance Administration which is commonly called LEAA,
22 a part of the United States Department of Justice.

23 More specifically, the indictment can be
24 broken down into the following parts:

25 First, there is an introduction which sets

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forth the nature of the program, the structure of how this federally funded program works in New York as well as listing some of the parties involved including James Thweatt, who is described in the indictment as the Director of the Legal Proximity Program. Hereafter I shall refer to that program as Legal Pro, and you will take my shorthand way of referring to the program as meaning that I am talking about the Legal Proximity Program.

In addition, the indictment describes Mr. Thweatt as Vice-President and Treasurer of Streetworkers, Inc.

The introduction also alleges that the Legal Pro or Streetworkers Program was awarded initially \$71,000 in federal funds and was itself to provide \$63,000 of so-called match funds which sums were increased subsequently.

The introduction also sets out a number of applications for refunding of both a short and long term nature.

In addition to the introduction, the indictment contains 36 false statement counts. The first 19 counts numbered 1 through 19 allege that Mr. Thweatt made false statements or assisted others in making false statements.

1 qjw 7

2 concerning the payment of rent for the Legal Pro store-
3 front on Madison Avenue in monthly reports which were
4 submitted in connection with the Streetworkers program.

5 Specifically Counts 1 through 19 represent
6 monthly reports in which it is alleged that Mr. Thweatt
7 overstated the rent and submitted false documentation
8 to support the claimed rental expense.

9 The second group of counts, Counts 20 through
10 36 charge Mr. Thweatt with concealing and omitting
11 from the reports various expenditures including the
12 purchase of two Mercedes-Benz automobiles, the payment
13 on both his and his brother's apartments and the receipt
14 by him of certain program monies.

15 Count 37 charges Mr. Thweatt with embezzling
16 or converting money in connection with the rental payments
17 described in Counts 1 through 19.

18 Count 38 charges the defendant with embezzling
19 or converting money and things of value corresponding
20 to the items set forth in Counts 20 through 36.

21 Counts 1 through 19 and 20 through 36,
22 that is the first 36 counts of the indictment charge
23 violations of Section 1001 of Title 18 United States Code.

24 That section reads as follows:

25 "Whoever in any matter within the jurisdiction

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2 of any department or agency of the United States knowingly
3 and wilfully falsifies, conceals or covers up by any
4 trick, scheme or device a material fact, or makes any
5 false, fictitious or fraudulent statements or representa-
6 tions, or makes or uses any false writing or document,
7 knowing the same to contain any false, fictitious or
8 fraudulent statement or entry"-- and now I will complete
9 my quote and just interpolate --"commits a crime."

10 That is anyone who does what I have just
11 read, according to this section, commits a crime. Of
12 course, it will be up to you to determine whether or not
13 Mr. Thweatt did what is charged.

14 You will observe that this statute makes
15 it a crime knowingly and wilfully in a matter within
16 the jurisdiction of any agency or department of the
17 United States to:

18 One, falsify, conceal or cover up by
19 any trick scheme or device a material fact, or two,
20 make a false statement or, three, use a false writing
21 or document.

22 In Counts 1 through 19 Mr. Thweatt is
23 charged with making a series of false statements concern-
24 ing the rent in the monthly reports. He is also charged
25 with using a false writing or document inasmuch as it is

1 qjw 9

2 charged that the supposed documentation for the rent
3 consisted of Hollow checks to Streetworkers for the
4 first five months and thereafter rental receipts purportedly
5 from 121 Management Company and some of its principals,
6 including Iris Rucker and one Alvin Bragg.

7 The indictment charges that this documenta-
8 tion was false both because the amounts reflected did
9 not constitute rent and because neither Streetworkers
10 nor 121 Management had in fact been designated the agent
11 for the premises.

12 Counts 20 through 36 charge the concealment
13 and failure to report various itemized expenditures.
14 The government asserts that among the schemes and
15 artifices employed to effect the concealment of these
16 expenditures were the failure to segregate funds and the
17 use of inter-account transfers which would render
18 detection and tracing of funds difficult or impossible.

19 The purpose of Section 1001 of Title 18
20 of the United States Code is to protect the authorized
21 functions of the various governmental departments and
22 agencies from any type of misleading or deceptive practice.

23 It is not necessary, however, to prove
24 that in fact the governmental agency, in this case LEAA,
25 a part of the U.S. Department of Justice, was misled as

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a result of the statement if you do find in fact that the statement was false.

Neither is it material that the agency was not misled or even that it knew of the falsity of the statement should you so find.

The law recognizes no excuses or justification for a false, fictitious or fraudulent statement willfully and intentionally made to a department or agency of the United States.

In order to find Mr. Thweatt guilty of any of Counts 1 through 36, the so-called false statement counts, the government must prove beyond a reasonable doubt that:

One, and you would address yourselves to the counts one at a time, for each count on or about the date set forth in the indictment, the defendant made or caused to be made a false statement, used or caused to be used a false document, or by trick, scheme or device concealed a material fact.

Two, such false statement or document or concealment was made or used in a matter within the jurisdiction of a department or agency of the United States and,

Three, the defendant's action was done

1 knowingly and wilfully.

2 I will now discuss each of the three
3 elements which I have just referred to.

4 You will recall that the first element
5 which the government must establish is that the defendant
6 made a false statement, used a false document or concealed
7 a material fact.

8 The government has presented evidence the
9 monthly cost reports for the Legal Pro program were
10 submitted to the New York City Criminal Justice Coordinating
11 Council, which has been referred to in a shorthand way
12 as CJCC, and then to the New York State Department of
13 Criminal Justice Services referred to as DCJS, which
14 in turn incorporated the information contained in the
15 monthly reports in reports which it submitted to LEAA,
16 an agency of the United States Department of Justice
17 as part of and pursuant to the so-called LEAA grant
18 program.

19 The questions which you must focus on
20 with respect to each of Counts 1 through 36 therefore
21 are:

22 One; did the monthly report covered by
23 that count contain false statements or use false docu-
24 mentation or conceal a material fact.
25

1 qjw 12

2 Two, if so, did the defendant, James
3 Thweatt, make or cause to be made such false statement, or
4 used false documentation for such concealment?

5 In connection with these questions the
6 law doesnot require that the defendant have committed
7 every act comprised in the offense itself in order for
8 him to have committed the crime charged here.

9 The defendant may be held responsible
10 under the so-called "Aiding and Abetting" statute,
11 18 U.S.C. Section 2, which is also charged as having
12 been violated in Counts 1 through 36.

13 That section, the so-called "Aiding and
14 Abetting" statute, provides:

15 "Whoever aids, abets, counsels, commands,
16 induces or procures the commission of an offense against
17 the United States is punishable as a principal. Whoever
18 wilfully causes an act to be done which if directly
19 performed by him"-- I will skip some words-- "would be
20 an offense against the United States, is punishable as
21 a principal."

22 Thus, if you find that Mr. Thweatt counseled
23 or induced or procured or caused another person to
24 conceal a material fact or to make a false statement or
25 to use a false document, then you may find the first

1 .qjw 13

2 element satisfied.

3 If, on the other hand, you are not satisfied
4 beyond a reasonable doubt that he did so himself or
5 through someone else, then you must acquit as to the
6 particular count under consideration.

7 It is not necessary that the person who
8 ultimately submits the reports be aware that they were
9 false. If you find that the defendant caused the false
10 statements to be made in the first instance as to the
11 first element in Counts 1 through 19, in determining
12 whether the statement or representation or document was
13 material and false, fictitious or fraudulent, the question
14 for you to decide as to each of these counts is whether
15 it reported rent in excess of the true rent or whether
16 it contained false documentation in the form of Hollow
17 checks to Streetworkers and later the rent receipts of
18 121 Management.

19 In resolving the first element you should
20 keep in mind that a statement, representation or document
21 is false if it was untrue when made and was then known
22 to be untrue by the person making it or causing it to
23 be made.

24 A statement or document is fictitious if
25 it is not real or if it does not correspond to what

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2 actually occurred. A statement, representation or
3 document is fraudulent if it was falsely made or caused
4 to be made with intent to deceive.

5 On Counts 1 through 19 the question you
6 must focus upon as to each monthly report is whether the
7 report contained material false statements concerning
8 the rent or contained false and deceptive documentation
9 concerning alleged payments.

10 You need not find that all of the entries
11 on the reports were false. It is sufficient if you find
12 that one or more entries were false, so long as you
13 are unanimous as to the specific false item.

14 Counts 20 through 36 list various expenditures
15 which are alleged to have been omitted from the monthly
16 reports. You will note that Counts 20 through 36
17 rely on concealment by "trick or scheme or device".

18 A scheme is merely a plan to accomplish
19 an object such as seeking to obtain money or property
20 from another by means of false representations as to a
21 material fact.

22 You may find a trick, scheme or device
23 if you find that the statement or omission when considered
24 in the light of all the circumstances was calculated by
25 Mr. Thweatt to deceive, mislead or create a false impression

1 qjw 15

2 as to the financial condition of the Legal Propinquity
3 program and the manner in which program funds were
4 expended.

5 The government contends that among the
6 so-called and alleged tricks, schemes, or devices
7 employed by the defendant were multiple inter-company
8 account transfers of Legal Pro funds which obscured,
9 at least in part, the tracing of funds.

10 Under the subcontract those administering
11 Legal Pro were required to keep accurate records of the
12 receipt of funds, expenditures and expended balances.

13 The government contends that had such
14 records been maintained the problems of tracing funds
15 would have been considerably reduced or perhaps eliminated.

16 In connection with Counts 20 through 36
17 the government contends that Mr. Thweatt made or caused
18 to be made several unreported expenditures from federal
19 and/or match funds which expenditures were not necessary
20 and reasonable to the proper and efficient administration
21 of the program as required under the grant award, which
22 is Government's Exhibit 28 in evidence, the subcontract
23 between CJCC and the Hollow Organization, which is
24 Government Exhibit 30 in evidence, and federal regulations.
25 Expenditures of both federal

1 .qjw. 16

2 and match funds are subject to the requirements that
3 they must be necessary and reasonable to the program.

4 Among the alleged improper expenditures
5 are rental or maintenance payments for the apartments
6 of James Thweatt and his brother David, two Mercedes-
7 Benz automobiles, and travel expenses.

8 The government contends that these and
9 other expenditures specified in Counts 20 through 36
10 of the indictment should have been reported in the
11 monthly cost reports.

12 Accordingly, Counts 20 through 36 charge
13 Mr. Thweatt with concealment of these expenditures by
14 omitting them, that is leaving them out from the monthly
15 cost reports.

16 The government contends that the expenditures
17 were material and it relies on the fact that the monthly
18 cost reports were the basis for reimbursements to the
19 Legal Proximity program and for determining whether
20 funds were being spent in accordance with the grant
21 award and federal regulations.

22 The government further relies on the fact
23 that applications for refunding Legal Pro were pending
24 in and after June 1973 which applications, the government
25 contends, were signed by James Thweatt.

Mr. Thweatt contends that there was no obligation to report the alleged expenditures because of what he contends is insufficient proof that the expenditures were of federal funds.

On the other hand, the government contends that Mr. Thweatt was put on notice as early as April or May of 1972 to segregate, that is to separate, the funds of Legal Pro. And the government contends that the bank accounts from which the expenditures were made contained federal and/or matched funds.

Thus as to Counts 20 through 36 you must decide whether the report under consideration omitted the reporting of at least one of the expenditures charged in the indictment. So long as you will agree as to which expenditure.

You will note that it is not necessary for the government to establish that LEAA relied on or suffered damages as a consequence of any false statement, representation or concealment. It is enough that the defendant expected the government would rely on the monthly cost reports nor does the government have to prove that all the entries in the report in question were false.

It is sufficient, as I said a few moments

1 .qjw 18

2 ago, that you find that one or more of them were false,
3 fictitious or fraudulent. Of course, such representations
4 or omissions must be of material facts.

5 I said, if you recall, that there were
6 three elements which the government would have to prove
7 beyond a reasonable doubt in order to sustain the charges
8 on Counts 1 through 36.

9 You will recall that I said there was a
10 second element which is that the statement or representa-
11 tion or the writing or document be made or used in a
12 matter within the jurisdiction of a department or
13 agency of the United States.

14 I charge you, as a matter of law, that the
15 Law Enforcement Assistance Administration, or LEAA, an
16 agency of the United States Department of Justice is an
17 agency of the United States and that the submission of
18 monthly reports to the New York City Criminal Justice
19 Coordinating Council is a matter within the jurisdiction
20 of an agency or department of the United States.

21 If you find that the defendant concealed
22 or covered up material facts or made statements or
23 representations to or submitted false writings or
24 documents to CJCC, then this second element is satisfied.

25 There is no requirement that the false

statement be submitted directly to a department or agency of the United States. All that is necessary is that you find that it was contemplated that the matter was to be utilized in a matter within the jurisdiction of a department or agency of the United States.

I come now to the third of the three elements which are essential to the government in the proof of the charges in Counts 1 through 36.

I would also note parenthetically, that this element is necessary in connection with Counts 37 and 38 and I will be coming back to that later. So this element goes through the entire indictment.

That is, that the government is required to prove that if the defendant made the kinds of statements in question or concealed the items contained in Counts 20 through 36 -- sorry, I will make that 1 through 36, Counts 1 through 36 -- and submitted the reports or caused them to be submitted in the way charged in this indictment, he did these things knowingly and wilfully.

The words knowingly and wilfully, which are a necessary element in each count of the indictment, these words identify or refer to the critical matter of criminal intent.

An act is done knowingly if it is done

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2 certifications were true and accurate, that would be a
3 defense.

4 On the other hand, you may find that the
5 defendant had guilty knowledge that the reports in
6 question contained false, fictitious or fraudulent
7 statements. That determination is yours and yours
8 alone.

9 As I stated previously, an act is done
10 wilfully if it is done knowingly and deliberately.
11 Wilful does not mean that the defendant, in addition
12 to knowing what he is doing, must also suppose he is
13 breaking the law. Ignorance of the law is no excuse.

14 Mr. Thweatt is charged in Counts 37 and
15 38 with violating a different section, Section 641 of
16 Title 18 of the United States Code.

17 That section provides in pertinent part
18 as follows:

19 "Whoever embezzles, steals, purloins or
20 knowingly converts to his use or the use of another or
21 without authority sells, conveys or disposes of
22 any record, voucher, money or thing of value of the
23 United States or of any department or agency thereof,
24 or any property made or being made under contract for
25 the United States or any department or agency thereof,

1 qjw 23

2 with a value in excess of \$100" -- and now I interpolate --
3 "commits a crime".

4 Count 37 charges embezzlement or conversion
5 of monies pertaining to the rent at the Legal Pro
6 storefront on Madison Avenue. This count parallels
7 Counts 1 through 19.

8 Count 38, which largely parallels Counts
9 20 through 36 relates to the embezzlement or conversion
10 of a number of items allegedly amounting to in excess
11 of \$100.

12 In order to find Mr. Thweatt guilty of
13 Counts 37 or 38, or both of them, of the indictment, you
14 must find beyond a reasonable doubt four elements:

15 One, that the LEAA is a department or
16 agency of the United States.

17 Two, that records, vouchers, money or
18 things of value in question were records, vouchers,
19 money or things of value of LEAA with a value in excess
20 of \$100.

21 Three, that sometime during the period
22 set forth in Counts 37 and 38 of the indictment -- and
23 that would be for Count 37 from in or about July 30,
24 1972 up to and including in or around January 1974,
25 Count 38, from in or about August 1972 up to and including

1 qjw 24

2 in and around February 1974 -- in the Southern District
3 of New York, the defendant embezzled, stole or converted
4 to his own use or to the use of another records, vouchers
5 or money of LEAA and,

6 Four, that the defendant did so knowingly,
7 wilfully and with criminal intent.

8 Turning to the first of these four
9 elements, I have already instructed you that LEAA is an
10 agency of the United States. Therefore, I turn to the
11 second of the four elements.

12 The second element requires you to be
13 satisfied beyond a reasonable doubt that the money or
14 things of value were money or things of value of the
15 United States.

16 With respect to Count 37 the government
17 relies on the fact that the Legal Pro reports themselves
18 which were submitted to CJCC listed rent as a "federal"
19 expenditure and on the fact that the rental payments
20 came from bank accounts which contained federal funds.

21 With respect to Count 38, the government
22 argues that these expenditures came from bank accounts
23 in which federal monies were deposited and that at least
24 a pro rata or proportionate share of any embezzlement
25 or conversion should be attributed to federal funds.

The government further asserts that Mr. Thweatt should not be able to derive benefit from Legal Pro's failure to segregate federal from non-federal funds.

The defendant, on the other hand, asserts that the government has failed to produce sufficient evidence to show that the funds were federal funds. The determination is for you to make.

For each count, that is, I speak of Count 37 and 38, you must also determine that the alleged embezzlement or conversion had a value in excess of \$100.

If you find Mr. Thweatt guilty with respect to either Count 37 or Count 38, or both of them, your verdict in connection with each of your findings and each of the two counts must also state whether or not the value of the embezzlement is in excess of \$100.

I said there were four elements. I have now covered two of them.

The third element requires the government to prove beyond a reasonable doubt that Mr. Thweatt stole or converted to his use or the use of another money or things of value. The word "stole" has its usual meaning, to take goods or money belonging to another with intent to deprive the owner of the rights and benefits of ownership.

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2 The word "convert" does not mean to change
3 the property, rather it means to use it for the benefit
4 of oneself or another and not for the benefit of those
5 who are lawfully entitled to possess it.

6 In Count 37 the government contends that
7 by diverting the rent money through 121 Management to
8 his bank accounts, the defendant converted a thing of
9 value of the United States.

10 In Count 38 the government contends that
11 the defendant embezzled or converted funds by a number
12 of improper expenditures.

13 The third element of the crimes charged
14 in Counts 37 and 38 can be satisfied if you are convinced
15 beyond a reasonable doubt that the defendant embezzled
16 or converted money or things of value of the United
17 States to his own use or to the use of another without
18 authority.

19 The term "embezzle" as used in this case
20 means the unlawful taking or conversion by a person to
21 his own use or for the use of another money or things
22 of value which came into his custody or possession
23 lawfully by virtue of his office or employment in a
24 position of trust.

25 So, to constitute an embezzlement of the

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2 United States by a director of a federally funded program,
3 it must appear from the evidence that the defendant was
4 an agent of or in a position of trust with a department
5 or agency of the United States; that the monies which
6 were involved came into his possession and custody
7 while he was such an agent by virtue of or because of
8 his authorized capacity and were, while under his
9 possession and custody, unlawfully applied or converted
10 to his own use or to the use of another.

11 If you find that the defendant was under
12 a duty as part of his authorization to use the money
13 for the payment of rent or other program purposes, you
14 may find that he converted the money under the statute
15 involved in this case.

16 This element would be satisfied if you
17 found that the defendant was entrusted with property
18 by the United States and he took it for his own use
19 or the use of another without authority.

20 The fourth and final element requires
21 you to be satisfied beyond a reasonable doubt that the
22 defendant acted knowingly, wilfully and with criminal
23 intent, as I defined those words a few minutes ago.

24 Knowledge and wilfulness and criminal intent,
25 as I indicated to you before, directs you to be concerned

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2 with the subject of people's states of mind. This is
3 a subject with which we regularly deal in real life as
4 well as here in the courthouse.

5 But it is a subject, as you know, of some
6 subtlety and complexity. For, after all, you cannot
7 look into a person's mind or into his head to see what
8 the person is thinking.

9 Knowledge, guilty knowledge, intent to
10 defraud, criminal intent, are things respecting which
11 we cannot normally rely on so-called direct evidence,
12 that is what we see or hear with our own senses. We
13 cannot rely normally on so-called direct evidence when
14 we are trying to determine whether a person has or had
15 such knowledge or such intent.

16 On occasion, of course, we do have direct
17 evidence. A person may make a statement or may write
18 a letter saying this is what I know, this is what I
19 intend or this is what I intended or this is what I
20 didn't know.

21 All of that, things you could see with
22 your eyes, if it were a letter, hear with your ears, if
23 it were a statement, all of that is what we call direct
24 evidence.

25 However, the fact that there is direct

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2 evidence does not necessarily mean that it is the best
3 evidence because people do not always write or speak the
4 truth about what they think or intend. So we have
5 another type of evidence. It is called circumstantial
6 evidence and just as you will consider direct evidence
7 you will consider all the circumstantial evidence in the
8 case in determining whether the alleged intent to defraud,
9 the criminal intent that we speak of, has been made out
10 with respect to Mr. Thweatt.

11 The existence or non-existence of guilty
12 knowledge or criminal intent is something commonly to
13 be inferred from what I have just called circumstantial
14 evidence as distinguished from direct evidence.

15 / Circumstantial evidence is evidence of
16 facts and circumstances from which one may infer
17 connected facts which reasonably follow in the common
18 experience of mankind.

19 Stated somewhat differently, circumstantial
20 evidence is that evidence which tends to prove a disputed
21 fact by proof of other facts which have a logical tendency
22 to lead the mind to a conclusion that those facts exist
23 which are sought to be established.

24 Circumstantial evidence is of no less
25 value than direct evidence for in either case whether

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the evidence be direct or circumstantial or a combination of both, you must be convinced beyond a reasonable doubt of the guilt of the defendant.

Let us take one simple example, an example which is often used in this courthouse to illustrate what is meant by circumstantial evidence.

Assume that when you entered the courthouse this morning the sun was shining outside and it was a clear day. There were no clouds in the sky, there was no rain. Assume that the drapes on the windows which are before you are drawn and you cannot look outside. Assume that you are sitting in your jury box and despite the fact that it was sunny and dry when you entered the building you hear a pitter-patter on the window and then you turn and someone walks through the courtroom door with an umbrella dripping water, followed in a short time by a person wearing a raincoat and the raincoat is dripping water.

Taking our assumption, you cannot look out the window to see directly whether it is raining or not and if you are asked is it raining you cannot say that you know this of your own knowledge but certainly upon the combination of facts as I have given them to you, even though you may have entered the courthouse in sunshine

1 qjw 31

2 it would be logical and reasonable for you to conclude
3 that it's raining now.

4 That is about all there is to circumstantial
5 evidence. You interpret on the basis of reason and
6 experience from an established fact the existence of
7 some further fact.

8 What do you consider when you try to
9 figure out whether somebody acted purposely, intentionally
10 and with knowledge of one thing or another?

11 Well, you do this all the time in real
12 life. You consider who the person is, what the circum-
13 stances are, the level, so far as you know it, of the
14 person's intelligence, education and sophistication, the
15 means of information available to that person or at his
16 disposal, the plausability of supposing a person acted
17 deliberately or not deliberately.

18 You consider, in short, all the circumstances
19 and put them together in the whole setting of the case
20 and you decide from all of the evidence with respect to
21 the defendant whether or not he acted knowingly and
22 wilfully and with criminal intent during the period
23 covered in this case.

24 In a financial sense what you have here,
25 at least to some extent, you may find more specific

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things to consider in determining knowledge and wilfulness
So you will consider things that I will mention to you
just illustratively and then add to them all the things
that you know from all the diverse experiences you have
had in deciding this question of intent.

The kind of wrongful purpose that is
charged throughout this case may be refuted or partly
discounted by evidence to the extent you find there
is such evidence that the actions in question were
taken openly and normally with full disclosure, with
clear and standard records and, in general , in a business
style of proceeding that is inconsistent with the kind
of wrongful, fraudulent, deceptive kinds of purpose
charged in this indictment and claimed by the government
to have been proven.

By the same token, if you find that normal
business routines were not followed and that the true
facts were concealed by means of false documentation,
such facts may indicate a wilful intent to deceive or
mislead so-called criminal intent.

You may find that even otherwise
proper business activities may be misused for a fraudulent
purpose.

So I say in sum, that on the element of whether the defendant acted knowingly and wilfully and with criminal intent, it is for you finally to review and put together all of the circumstances in deciding whether or not that element has been established by the government beyond a reasonable doubt with respect to Mr. Thweatt.

How do you determine the truth and how do you appraise the credibility of the many witnesses who appeared before you?

Well, I tell juries pretty regularly, and I am going to tell you, you use your own plain, everyday common sense. You have seen the witnesses. You have observed the manner of their testifying and whatever credit you may give them must be determined by their conduct and their manner of testifying and their relationship or interest in the outcome.

In other words, you again apply your common sense and your everyday experience. You may consider in determining the weight and credibility to be given to the testimony what is called the interest of the witness.

Certain of the witnesses called by the government have testified that they are friendly with

1 qjw 34

2 Mr. Thweatt. -- You may consider this factor in assessing
3 whether those witnesses testified fully and truthfully.

4 Certain of the witnesses called by the
5 defense were friends or relatives of Mr. Thweatt. You
6 may consider this factor in assessing whether those
7 witnesses testified fully and truthfully..

8 If any witness wilfully testified falsely
9 to any material fact you may disregard all of that
10 witness' testimony or you may accept such part of the
11 testimony of that witness as you believe worthy of
12 belief or as it appeals to your reason or judgment.

13 A witness may be discredited or impeached
14 by contradictory evidence or by evidence that at other
15 times the witness has made statements which are incon-
16 sistent with the witness' present testimony.

17 If you believe that any witness has been
18 impeached and thus discredited it is your exclusive
19 province to give the testimony of that witness just
20 such weight and value, if any, as you may think it
21 deserves.

22 There has been evidence that Mr. Thweatt
23 made certain statements before the New York City Depart-
24 ment of Investigation in June of 1974 tending to show
25 his innocence in particular statements which tended to

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conceal the fact that Iris Rucker is his sister.

There has also been evidence that the government contends that these statements were false when made.

I charge you that so-called exculpatory statements when shown to be false are circumstantial evidence of consciousness of guilt and have independent probative force.

In addition, the government has submitted evidence that Mr. Thweatt suggested to Walter Watson prior to Mr. Watson testifying before the grand jury, that he did not have to remember certain matters even if he were given immunity from prosecution.

If you credit this evidence you may consider it as evidence of Mr. Thweatt's consciousness of guilt.

In the same vein, you may consider the testimony of Mr. Joseph McNally, the handwriting expert, that in his opinion the handwriting exemplars given by Mr. Thweatt to a representative of the FBI were not true samples of Mr. Thweatt's handwriting.

If you find that Mr. Thweatt disguised his handwriting you may, but need not, infer consciousness of guilt.

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2 The government has put in evidence which it
3 claims shows acts by the defendant with regard to the
4 property at 161 East 121st Street similar to those
5 charged in Counts 1 through 19 and 37 which relate to the
6 matters at the storefront.

7 The government contends that the evidence
8 which it presented shows the following:

9 In 1973 Mrs. Anna B. Ricca deeded the
10 property at 161 East 121st Street in Manhattan to
11 Streetworkers, Inc. Streetworkers used the property
12 for a drug rehabilitation program it administered which
13 was funded by the Addiction Services Agency, which has
14 been referred to here as ASA.

15 In June 1973 Streetworkers, Inc. filed a
16 lease with ASA whereby Streetworkers, Inc. would rent
17 the property from 121 Management Company as of an earlier
18 date, namely November 1972.

19 Mr. McNally testified that in his opinion
20 James Thweatt signed the name of his sister Iris Rucker
21 to this lease on behalf of 121 Management Company. Iris
22 Rucker testified that she signed the lease.

23 In accordance with the lease, Streetworkers
24 paid rent to 121 Management Company of \$300 per month
25 and subsequently \$1400 per month and was reimbursed for

1 qjw 37

2 these amounts by ASA.

3 The government contends that this was not
4 valid rent since Streetworkers themselves had acquired
5 the building.

6 In addition, the government argues, the
7 evidence shows, that the rental payments for the 121st
8 Street property along with rental payments for the Legal
9 Proximity Madison Avenue storefront were deposited to
10 the account of 121 Management and subsequently transferred
11 to the defendant's own bank accounts.

12 On the other hand, the defendant contends
13 that 121 Management Corporation was a legitimate business
14 venture in which Iris Rucker has invested \$4,000 of
15 her own money. While the defendant is not on trial
16 for these acts you may nevertheless consider these acts
17 with respect to the charges in Counts 1 through 19 and
18 37 on the question of guilty knowledge or unlawful
19 intent, preparation, plan and absence of mistake or
20 accident.

21 You may also consider this evidence as it
22 affects your assessment of the question whether 121
23 Management Company was the legitimate recipient of
24 rents of the Legal Pro program and whether 121 Management
25 Company was performing legitimate management services or

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was merely a device for the transfer of program funds from Legal Pro to Mr. Thweatt.

Thus, you may consider this evidence for these limited purposes only in connection with Counts 1 through 19 and 37.

One or more of the government's witnesses conceded during their testimony that they participated in certain of the crimes charged in the indictment.

In proving its case the government, from time to time, must use the testimony of alleged accomplices because otherwise it would be difficult or impossible to detect or prosecute wrongdoers.

The testimony of an alleged accomplice is not to be rejected unless you think it has no weight. Like any other testimony it is to be taken up and dealt with by you who are the triers of the fact.

If accomplices could not be used there might well be cases where convictions should have been had but they could not be obtained. Thus, accomplice testimony may be considered by you. However, the testimony of an accomplice must be considered with extreme caution and weighed with great care.

Moreover, it is the universal rule in the federal courts that defendants may be convicted on the

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uncorroborated testimony of an accomplice.

You will recall that the only defendant charged in this indictment is Mr. Thweatt. In this connection you may not draw any inference favorable or unfavorable toward the government or the defendant, who is on trial, from the fact that a certain person or persons were not named as a defendant or defendants or possibly having been named in some other case are not on trial before you now.

The fact that another person may or may not have been charged is a matter wholly outside your concern and has no bearing on your function as jurors.

I referred a few moments ago to Mr. McNally, the handwriting expert. The government introduced testimony of Mr. McNally concerning his opinion as to signatures and handwriting on a number of checks, rent receipts, letters, monthly cost reports and other documents as well as other specimens of handwriting.

It has also introduced the testimony of Special Agent Martin Towey and Charles Gomez on certain accounting matters.

The general rule is that witnesses are permitted to testify only as to facts and may not express their opinions. An exception to this rule is the opinion

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of a qualified expert on some particular technical matter, such as handwriting analysis or accounting.

The expert may testify as to his opinion on a subject concerning which he has special knowledge. This is allowed on the theory that the advice of one experienced and versed in technical or special subjects will aid the jury.

You may consider the expert's qualifications and opinion, weigh his reasons, if any, and give his testimony such weight and value as you believe it deserves. As previously stated, expert opinion is purely advisory and you may reject it entirely if in your judgment the reasons given for it are not convincing or sound.

The determination of the weight which you will choose to give to the testimony of the expert rests with you and not with the experts. It is up to you. You can give the testimony of the experts great weight, moderate weight, little weight or no weight at all. It is up to you and you alone.

The charts and summaries of the evidence that were before you during the course of the trial are not evidence themselves. They are mere resumes, visual representations of information or data as set forth in the testimony of witnesses or in documents that

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have been received in evidence. They are no better than the testimony or the documents upon which they are based. It is for you to decide whether the charts, schedules or summaries correctly present the data set forth in the testimony and in the exhibits on which they are based. ✓

We turn to another subject. There has been testimony here about the previous good character of Mr. Thweatt. You should consider such evidence of character together with all the other facts and all the other evidence in the case in determining the guilt or innocence of the defendant. ✓

Evidence of good character may in itself create a reasonable doubt where without such evidence no reasonable doubt would have existed.

But, if on all the evidence you are satisfied beyond a reasonable doubt that the defendant is guilty, a showing that he had previously enjoyed a reputation of good character does not justify or excuse the offense and you should not acquit a defendant merely because you believe he is a person of good repute.

The testimony of a character witness is not to be taken by you as the witness' opinion as to the guilt or innocence of the defendant. Indeed a number

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of the character witnesses testified that they were not aware of the facts of this particular case.

The guilt or innocence of the defendant is for you and you alone to determine and that should be based on all the evidence you have heard in the case.

A defendant has the absolute right not to testify and you must not draw any inferences against Mr. Thweatt because he did not testify.

Turning to another subject, if a potential witness could have been called by the government or by the defendant and neither side called him, then you may infer that the testimony of the absent witness might have been unfavorable either to the government or to the defendant or to both of them but, on the other hand, it is equally within your province to draw no inference at all from the failure of either side to call a witness.

You should bear in mind, however, that there is no duty upon either side to call a witness whose testimony would be merely cumulative or repetitious of testimony already in evidence.

If you do not find the government to have proved beyond a reasonable doubt that the defendant has committed one or any or all of the offenses charged here, you should not hesitate to acquit him on such

1 qjw 43

2 count or counts as have not been proved beyond a reasonable
3 doubt.

4 But, on the other hand, if you find beyond
5 a reasonable doubt the government has proved each and
6 every element in connection with a particular count
7 and that the law has been violated as charged, you
8 should not hesitate because of sympathy or any other
9 reason to render a verdict of guilty.

10 Turning to still another matter, I wish
11 to bring to your attention the fact that variances in
12 dates or in amounts are virtually inevitable in any
13 case involving more than a single transaction and,
14 consequently, the law and common sense agree that you
15 are not to waste your time worrying about what I will
16 call minor variances. The law only requires a substantial
17 similarity between the dates alleged in the indictment
18 and the date or dates established by the testimony.

19 I further instruct you that it is sufficient,
20 if the government proves beyond a reasonable doubt one
21 falsity with respect to each monthly cost report in Counts
22 1 through 19 and one act of concealment with respect to
23 each monthly cost report in Counts 20 through 36.

24 You should not consider the question of
25 possible punishment of the defendant. That is to say

1 the question of punishment in the event you were to
2 determine the defendant guilty on any count or counts.

3 Under our system sentencing or punishment
4 is exclusively the function and responsibility of the
5 Court. Therefore, I ask you not to consider punishment
6 or possible punishment at all in your deliberations in
7 this case.
8

9 I mentioned a moment ago, and I do stress
10 it, that under your oath as jurors you are not to be
11 swayed by sympathy, just as you are not to be swayed by
12 bias or prejudice. These things have no place in your
13 deliberations.

14 You are to be guided solely by the evidence
15 in the case and the crucial hardcore question that you
16 must ask yourselves as you sift through this evidence
17 is where do you find the truth, what is the truth? This
18 is a quest for the truth. That is what a trial is.

19 The only triumph that anyone will have
20 in any case, whether it be civil or criminal, is
21 whether or not the truth emerged. If it has then justice
22 has been done. If not, justice will not be done.

23 You, ladies and gentlemen, are to determine
24 the guilt or innocence of the defendant James C. Thweatt
25 solely on the basis of the evidence and subject to the

law as I have charged here.

The most important part of this case is the part which you now as jurors are about to play for it is for you and you alone to decide whether Mr. Thweatt is guilty or not guilty of some or all of the crimes charged.

I know you will try the issues that have been presented to you according to the oath which you have taken as jurors in which you promised that you would well and truly try the issues joined in this case and a true verdict render, and I suggest to you that if you follow that oath and try the issues without combining your thinking with any emotions, you will arrive at a just verdict.

It must be clear to you that once you get into an emotional state and let fear or prejudice or bias or sympathy interfere with your thinking, then you will be unable to arrive at a true and just verdict.

As I have said, the charges here are serious. A just determination of this case is important both to the government and to the defendant.

Under your oath as jurors you must decide this case without fear or favor, but solely, as I have stated previously, in accordance with the evidence and

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2 the law.

3 You should consider each count separately.
4 If the government has failed to carry out and prove its
5 case beyond a reasonable doubt as to the defendant on
6 any count, your sworn duty is to bring in a verdict of
7 not guilty on that count.

8 If the government has carried its burden
9 on any count and has proved that count beyond a reason-
10 able doubt, you should bring in a verdict of guilty against
11 the defendant on that count.

12 There will be twelve men and women on this
13 jury. Any verdict on any count must be the unanimous
14 verdict of all twelve jurors.

15 I will point out to you that no one should
16 enter upon the deliberations in the jury room with such
17 pride of opinion that he or she would refuse to change
18 his or her mind if convinced by intelligent argument
19 on the part of another juror or jurors that they are
20 right.

21 However, you are not to do violence to
22 your own well founded opinion and common sense. You
23 will be taking your common sense into the jury room when
24 you retire to deliberate. I expect that when you come
25 out of the jury room your common sense and your good

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2 conscience will accompany you.

3 You are entitled, each of you, to your
4 opinion. In other words, each of you must decide the
5 case for himself and herself after thoroughly reviewing
6 the evidence and exchanging views with your fellow jurors.

7 After you have exchanged your views you
8 should vote count by count guilty or not guilty and on
9 Counts 37 and 38 you will consider whether or not the
10 amount involved was or was not in excess of \$100.

11 It is the custom in this court for the
12 juror seated in Seat No. 1, in this case Mrs. Mary A.
13 Brennan, to serve as the foreman or forelady, or as
14 some call it, the foreperson. Mrs. Brennan, who is
15 Juror No. 1, will serve as your forelady.

16 Her function will be to take the vote and
17 to tally it and ultimately to report your verdict here
18 in court.

19 In the event you require anything among
20 the numerous things I have indicated to you both during
21 the trial and during this charge that you want, then
22 it will be her function to see to it that a note is
23 prepared on paper and pencil which will be supplied to
24 you and that note will then be sent out of the jury
25 room requesting whatever you want.

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2 I will meet with the attorneys when the
3 note is received and we will try to accede to your request,
4 wherever it is proper, as promptly as possible.

5 When, as and if the jury has reached a
6 verdict, your forelady will report the verdict here in
7 open court.

8 Ladies and gentlemen, I have completed my
9 charge. Before sending Jurors 1 through 12 in to
10 deliberate I will ask them, and I address myself to our
11 twelve regular jurors, whether you all feel in good
12 health both physically and emotionally and are ready,
13 willing and able to proceed to deliberate in this case.
14 If anyone feels for physical or emotional reasons that
15 he or she is not prepared to proceed into the jury room
16 to deliberate fully and fairly on this case I would ask
17 that juror, and I address Jurors 1 through 12, to raise
18 his or her hand.

19 Let the record reflect that I see no hands.
20 Therefore, I am going to do two things. I am going to
21 speak to the attorneys briefly at the side bar and I
22 am going to ask our three alternate jurors, the three
23 who remain from before we began, to go into the jury room
24 if you have any belongings and get them and bring them
25 back here to the courtroom. Would you do that please.

qjw 49

I will ask the other jurors to remain in their seats while I speak with the attorneys at the side bar.

(At the side bar)

THE COURT: Are there any exceptions, Mr. Schatz?

MR. SCHATZ: Your Honor, it's not really an exception but with respect to Request No. 22 I believe you said either 1970 or '71 in connection with Mrs. Anna B. Ricca and she deeded the property at 161 East 121st Street and it's the government's contention it was 1973.

THE COURT: I had intended to say 1973. Let me suggest that I give you gentlemen two options.

No. 1, I can make the correction or, No. 2, I would indicate to you that I had told the jurors that it was their recollection of the facts which governs and at this stage I think that admonition would suffice particularly in light of the fact that this was a lengthy charge.

But I will ask you if you gentlemen wish to have the sentence reread by me I would do it but I think in the context that I just indicated it probably would not help matters.

Let me hear from Mr. Bernstein on that.

1 .qjw. 50

2 MR. BERNSTEIN: I would just as soon
3 take the second alternative. I am obviously concerned
4 about highlighting something.

5 THE COURT: You do not wish me to read
6 it?

7 MR. BERNSTEIN: No.

8 THE COURT: Let me suggest that if the
9 jury requests this portion of the charge then I will
10 ask when the reporter reads it that he read the
11 date the way I intended, is that agreeable, gentlemen?

12 MR. BERNSTEIN: Yes.

13 THE COURT: Do you have any other
14 exceptions, Mr. Schatz?

15 MR. SCHATZ: No, your Honor.

16 THE COURT: Mr. Bernstein?

17 MR. BERNSTEIN: No, sir.

18 THE COURT: Are there any requests for
19 supplemental instructions, Mr. Schatz?

20 MR. SCHATZ: No, your Honor.

21 THE COURT: Mr. Bernstein?

22 MR. BERNSTEIN: No, sir.

23 THE COURT: Thank you, gentlemen.

24 (In open court)

25 THE COURT: Mr. Guranich, would you swear

qjw 51

the marshal, please.

(A marshal was duly sworn)

THE COURT: Marshal, do you have paper and pencils?

THE MARSHAL: Right here, your Honor.

THE COURT: Very well, that is fine.

Ladies and gentlemen, I am about to place Jurors 1 through 12 in the charge of the marshal. He will attend you throughout your deliberations. Your deliberations are private. He will be outside of the jury room door. Should you require anything you will knock and then open the door and if you require anything just give him whatever message you have. He will see to it that we receive it.

The marshal is the only outside person -- and he has relief marshals and assistants -- but he is the only outside person with whom you will communicate during the course of your deliberations.

One final thing, when you go inside some of you may want to stop and wash your hands and so on. Take care of your business and then when you have gathered around the table, all twelve of you, now you may deliberate and your deliberations should be as complete as you desire.

qjw 52

I would suggest that it is most important that deliberations take place with all members of the jury present so that all persons are there at all times so there will be a full and complete interchange of views.

At this time I will ask Jurors 1 through 12 to proceed to the jury room to begin their deliberations.

Let the record reflect that the jurors have begun their deliberations and I have excused the alternate jurors.

(At 3:45 the jury commenced their deliberations)

THE COURT: Mr. Schatz.

MR. SCHATZ: I would just like to mark for identification Government Exhibit 3500 for identification which lists various 3500 materials that the government turned over to defense counsel.

Mr. Bernstein has represented to me that he will return the materials that we have given to him as quickly as possible and I have accepted that representation.

THE COURT: Very well.

MR. BERNSTEIN: I accept the representation.

(Government Exhibit 3500 marked

for identification)

THE COURT: Anything further, gentlemen?

MR. LIVINGSTON: One item I wanted to put on the record. Monday I spoke to Ruby Wright on the telephone and I asked her where she had been on Thursday afternoon and she told me she was out on normal CJCC business and she had spoken to Mr. Bernstein in the morning and she said that he had told her or asked her to be available by the phone until 1:00 o'clock and she said that after 1:00 o'clock she left to go and take care of normal business duties at CJCC.

I only want to put that on the record because that seemed to be her understanding of it so there would not be any implication that she attempted to make herself unavailable.

THE COURT: Let me suggest whether she did or not would have to be the subject of proof. I would only be concerned if one side or the other side procured her unavailability and there is no hint of that as far as either side is concerned.

She was not called by either side. I made a reference in my charge to the matter of uncalled witnesses and I think that if it's agreeable to both sides we can leave the matter at that.

1 qjw 54

2 MR. LIVINGSTON: Very well.

3 MR. BERNSTEIN: Yes, sir.

4 (Pause)

5 THE COURT: Gentlemen, I have received
6 the first note from the jury which I have timed at
7 3:55 p.m. and we have marked Court Exhibit 2. The note
8 reads:

9 "Copy of indictment, Government's Exhibits
10 1 - 20, including supporting checks and rent receipts."

11 Mr. Schatz, you have handed me a carbon
12 copy of the indictment. Have you gone over it with
13 Mr. Bernstein and if you both agree that is an
14 accurate copy of the indictment with one minor change
15 that you had requested be made, I am prepared to send
16 that into the jury.

17 MR. SCHATZ: Yes, it is, your Honor. I
18 think Mr. Bernstein agrees.

19 Is that right, Mr. Bernstein?

20 MR. BERNSTEIN: Yes.

21 THE COURT: That is the indictment.

22 With respect to the other part of the
23 note, you have handed me a stack of documents. Let
24 us quickly peruse them.

25 Mr. Schatz, you have handed me Government's

1 qjw 55

2 Exhibits 1 through 20 in evidence and also 19-A.

3 Would you indicate for the record why you
4 have handed me 19-A in addition?

5 MR. SCHATZ: Yes, your Honor. The note,
6 as I understand it, requested in addition to Government
7 Exhibits 1 through 20 the supporting checks and rent
8 receipts.

9 19-A has a rent receipt for reasons which
10 I can't fathom except for the fact that whoever prepared
11 the report may have miscorrelated and miscollated the
12 document. 19-A has the rent receipt and not 19.

13 THE COURT: Very well.

14 In view of the jury's note I would ask
15 Mr. Bernstein if he has any objection in addition to
16 sending in Government's Exhibits 1 through 20, all of
17 which are in evidence, to also sending in Government's
18 Exhibit 19-A.

19 MR. BERNSTEIN: No, sir.

20 THE COURT: Mr. Guranich, would you give
21 the exhibits together with the indictment to the marshal
22 and ask him to please deliver them to the jury.

23 Thank you, gentlemen.

24 (Pause)

25 THE COURT: I have a matter now.

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qjw 56

With reference to the case on trial now,
let the record reflect that the Court is in recess.

I would request counsel and Mr. Thweatt
to continue to remain available although we just sent
in a very substantial quantity of documentary material
from the Court into the jury room it may be that there
will be another note and I would like to have all of us
available so that we can respond promptly..

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(The following took place at 5:15 p.m.)

THE COURT: I notice it is now 5:15 and the jury has been deliberating for approximately an hour and a half. I am going to request that the marshal make arrangements for the jury to have dinner out at 6:15.

My first question to you, Marshall, will be where, because all of us want to avoid the jury.

THE MARSHAL: I guess we will be going to eat at Giambone's.

THE COURT: I will ask the attorneys, then, not to have dinner tonight at Giambone's. If you make your dinner arrangements for 6:15, can you give us an estimate of when the jury would be returning from dinner?

THE MARSHAL: Approximately an hour.

THE COURT: At 7:15 they will return? Very well. Thank you.

(The following took place at 5:50 p.m.)

THE COURT: I have received another note from the jury which I have timed in at 5:29 p.m. They request certain material. They request the audit of the report to CJCC by Mr. Gomez. I can't indicate to them that is not in evidence.

They request an index of exhibits. I will tell them that we do not have one.

There are two other items here. They request all available handwriting exemplars.

MR. SCHATZ: Your Honor, I am passing up to the Court Government's Exhibit 67 in evidence, which is a stipulation entered into between the Government and Mr. Bernstein and Mr. Thweatt. This lists various known documents, both exemplar documents and other known handwriting exemplars. That document, which is in evidence, may give the jury some guidance as to what the various documents are.

THE COURT: I would propose, if you gentlemen are agreeable, to sending in the actual exemplars, which begin, I believe, with 6005, together with the stipulation, which is a stipulation in evidence as Government's Exhibit 627.

MR. BERNSTEIN: May I just take a look at the exhibit.

THE COURT: You will see that 626 refers to a number of exemplars, and refers to other materials. However, I think it will clarify matters, and since this is a stipulation, I can't see that it would be inherently prejudicial.

MR. BERNSTEIN: Let me tell you what my concern is. The request is for exemplars. It is true that this is,

2 of course, a stipulation and the jury could ask for it.
3 Nevertheless, at this time I would be disinclined because,
4 your Honor, this may give them certain ideas which concern
5 other documents. If they ask for it there is nothing I
6 can do or say. But at the moment the request is simply
7 for exemplars.

8 MR. SCHATZ: All the Government is interested
9 in is giving them some ideas which exemplars belong to whom.

10 MR. BERNSTEIN: The exemplars are different
11 from certain knowns. Part of it came in as substantive
12 evidence during the course of the trial. I am referring
13 specifically to certain letters.

14 THE COURT: Well, it is true the stipulation
15 does go beyond -- well, let me see the exhibits which begin
16 with 600A and go through 610. I think I can handle this
17 with the jury. I don't need to work with the stipulation.
18 Why don't you give me 600A and B in one unmarked folder
19 and then if you have another unmarked folder I will take
20 the rest of it and then I will explain to the jury.

21 Is that agreeable, Mr. Bernstein?

22 MR. BERNSTEIN: It is.

23 THE COURT: I can take it in one folder at a
24 time.

25 I propose that we send in two folders, one

entitled Exemplars Provided by James C. Thweatt on March 17, 1977, Government's Exhibit 600A and B, and that we enclose those government exhibits in this folder, and the second folder entitled ~~Ex~~emplars Provided by Other Persons on various dates, Government's Exhibits 601 through Government's Exhibits 610, and in there put all these exhibits, listing on the face of the folder the exhibit numbers which would be as follows, and also the persons providing the exemplars, which would be as follows, 601A and B, which were exemplars provided by Mary Chan, and 602, exemplars provided Iris Rucker; 603 exemplars provided by Warren Bruce Spraggins; 604, exemplars provided by David Thweatt; 605A exemplars provided by Alvin Bragg; 607A exemplars provided by Sidney Mann; 607, exemplars provided by Walter Watson; 608 exemplars provided by Joseph Horry; 609, exemplars provided by Carol Horry, and 610, exemplars provided by Harold Oostdyk.

I think since the jurors also have a question about notification of their family, it would be helpful if I brought them out and explained to them also that they can send messages out to their families by the marshal.

Also, I am going to indicate to them at this time in the event they conclude their deliberations late this evening, I will see to it that they proceed home in limousines, so that they don't feel that if it gets late

the best thing to do is to stay overnight.

Is that agreeable?

MR. SCHATZ: Yes.

MR. BERNSTEIN: Yes.

MR. SCHATZ: Do you think it appropriate for us to indicate that these are just the exemplars, not all known documents?

THE COURT: It says on the face Exemplars. I think that is sufficient identification, and I am going to explain it to them when I give it to them.

Have the marshal bring the jury in.

I understand Giambone's is too crowded and they are going to Aldo's.

(The jury took its place in the jury box.)

THE COURT: Ladies and gentlemen, I have received the second note from the jury, which I have read and have taken up with the attorneys, and I thought that it would be appropriate at this time to bring you out in response to this note.

The note requests several items and asks a question. Let me go down the line here:

1. Audit report to CJCC by C. Gomez.

Ladies and gentlemen, the audit report was marked for identification, but was not received in evidence.

Therefore, I am unable to send it in to the jury.

Next, index of exhibits.

We have searched and we find we have no index of exhibits which were received in evidence. Each of the persons here has a partial index, but we do not have a single index which contains all of the exhibits in evidence.

The third, although available, handwriting exemplars -- we have those. What we have done is to place them into two folders. One folder has been marked handwriting exemplars provided by James C. Thweatt on March 17, 1977. Then there is Exhibit 600A and B. So in this folder we have Government's Exhibit 600A in evidence and 600B in evidence. And as I have said, this folder, 600A and B, contains handwriting exemplars provided by Mr. Thweatt. I will give this folder to your forelady.

Then we have a second folder, which we have entitled Exemplars Provided by Other Persons, that is, other than James C. Thweatt, on various dates.

Then it says Government's Exhibit 600A and B through 610, and in here we have put Government's Exhibits 601A and B, which were exemplars provided by Mary Chan; 602, exemplars provided by Iris Rucker; 603, exemplars provided by Warren Bruce Spraggins; 604, exemplars provided by David Thweatt; 605A, exemplars provided by Alvin Bragg; 606A,

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exemplars provided by Sidney Mann; 607, exemplars provided

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by Walter Watson; 608, exemplars provided by Joseph Horry;

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609, exemplars provided by Carol Horry, and 610, exemplars

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provided by Harold Oostdyk.

6

So this is the second folder. These are exem-

7

plars provided by these persons, that is, persons other than

8

Mr. Thweatt.

9

Those are, as I understand it, all of the hand-

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writing exemplars which are in evidence; is that correct,

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gentlemen?

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MR. SCHATZ: Yes.

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MR. BERNSTEIN: Yes.

14

THE COURT: Is there anything which either coun-

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sel wants to take up with the Court regarding the matters

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which have transpired so far?

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MR. BERNSTEIN: No.

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MR. SCHATZ: No.

19

THE COURT: Now I turn to the matter of the last

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question, which is one of the primary reasons I brought you

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out: What arrangement can be made to notify the individual

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jurors' families that we will probably be sequestered for

23

the night?

24

If you will give messages to the marshal, he

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will see to it during the course of the early evening,

1 hopefully, that your messages are phoned in to the numbers
2 which you give the marshal. So each of you will prepare
3 a message with a telephone number and give it to the marshal,
4 since he is the only one who can communicate with the out-
5 side world, and he will make the calls for you.
6

7 I would like to point something out to you:
8 We have gotten at least one call that I know of in chambers
9 from a member of one of your families -- I don't know who.
10 We told the member of that family something, and I am going
11 to tell you something, too: We have made arrangements to
12 keep you overnight in a hotel. However, there is an alter-
13 nate. You will be continuing your deliberations after
14 dinner. If you reach a verdict later this evening, that
15 is, after your return from dinner, I am in position to send
16 all of you home by limousine. That is a customary practice
17 that I have followed.

18 So don't feel that if you reach a verdict you
19 are going to be turned out on the streets down here in the
20 middle of the night. If it is necessary for you to stay
21 over to continue your deliberations tomorrow, you will be
22 put up at a hotel. If you reach a verdict sometime after
23 you return from dinner and then have completed your work, I
24 am prepared to send you home, to provide service to your
25 door by limousine. So that I want you to be in position to

1 mkm
2 deliberate with free minds. It is not a question of what
3 do I do if I have to leave this area at ten o'clock tonight.
4 If you have to leave at that hour because the jury has com-
5 pleted its work, I will see to it that you go home.

6 So, two things: Messages as far as your plans
7 are concerned, give them to the marshal, together with the
8 telephone number. He will make the calls for you.

9 And the two options that are available to you
10 should you continue your deliberations, you will be put up;
11 should you complete your deliberations at sometime after
12 dinner you will be sent to your homes by limousine.

13 Is there anything further, gentlemen?

14 MR. SCHATZ: No.

15 MR. BERNSTEIN: No.

16 THE COURT: I am going to excuse the jury now.
17 You may want to write messages and prepare to go to dinner.
18 The dinner arrangements are 6:15, and you will not get there
19 until 6:30. The jury will return when it returns. I will
20 ask the attorneys and Mr. Thweatt to be back here at a
21 quarter of eight. The jury is excused.

22 I am going to excuse the attorneys now, because
23 I don't believe there is any need for me to keep them. We
24 will be available to you following your return from dinner.
25 Enjoy your dinner.

(The jury retired, and at 6:15 was taken to dinner and returned to continue its deliberations at 7:45 p.m.)

(At 9:55 p.m. the following took place.)

THE COURT: We just received a note from the jury. We timed it at 9:40 p.m. and it is marked Court's Exhibit 4. It is a request for exhibits. I will read it:

"Ziegler documentation showing rent paid for 1868 storefront.

"Ziegler letter.

"Mary Chan letter.

"Dear Rudy letter.

"Iris Rucker letter."

I suggest we attempt to assemble the items.

I would like the record to reflect that I have had the opportunity to speak with counsel, and in response to the last note which calls for the Ziegler documentation showing rent at 1686 Storefront, we are sending into the jury Government's Exhibits 159, 160A and 160B in evidence.

In response to the notation "Ziegler letter," since we do not know if the jury means letters to or from Mr. Ziegler, we are sending a series of letters which seem to generally cover the area the jury is seeking. Those are Government's Exhibits 158, 161, 162 and 162A in evidence.

With reference to the request for the Mary Chan letter, we are sending in Government's Exhibit 169.

In response to the request for the "Dear Rudy" letter, we are sending in Exhibit 168.

And in response to the request for the Iris G. Rucker letter, we are sending in Government's Exhibit 170.

All of these documents are in evidence.

Gentlemen, is it agreeable to both sides that the documents which I have described be sent to the jury in response to the note which is Court's Exhibit 4?

MR. SCHATZ: Yes.

MR. BERNSTEIN: Yes.

THE COURT: Very well.

(Exhibits sent in to the jury.)

(At 10:15 p.m. the following took place.)

THE COURT: Gentlemen, it is 10:15. I requested the marshal to inquire of the jury if a verdict was near. The marshal has reported the jury has indicated no. It is my intention at this time to call the jury in and to send them to a hotel for this evening and direct that the marshal return the jurors to continue their deliberations tomorrow at 9:30.

Is that agreeable?

MR. BERNSTEIN: Yes.

1 mkm
2 MR. SCHATZ: Yes, your Honor.

3 (The jury took its place in the jury box at
4 10:27 p.m.)

5 THE COURT: Good evening, ladies and gentlemen.
6 I had asked the marshal to inquire whether a verdict was
7 near and he did so, and he indicated to me that the jury
8 believed that no verdict was near.

9 Accordingly, I have reviewed the matter with
10 counsel and have decided to send you to your hotel for the
11 night. A bus is waiting downstairs and will take you to
12 your hotel or motel for the night.

13 Have you all brought something so that you all
14 have your things, as I asked you to? I see everyone is
15 nodding.

16 I am going to direct the marshals, since this
17 jury has worked a long day, that if any of the jurors would
18 like a nightcap before they turn in, any juror who wants to
19 have one may have one. If you don't want one, you can give
20 it to somebody else. So that it will be for anyone who
21 would like one.

22 I would suggest, ladies and gentlemen, if it is
23 convenient for you, it is now, as I say, after ten and the
24 bus is waiting; I would suggest if it is convenient that
25 you reassemble tomorrow morning at 9:30 a.m. Of course, the

marshal will bring you here by bus and you will reassemble.

Is that agreeable? Fine. If you come in a few minutes early I may not be ready for you. I may be tied up on something else. But I will make myself available. My own calendar begins at 9:30. So I will be here and try to make myself available to you, and of course counsel will be here as well.

At this time I am going to excuse the jury for the evening, continue you in the custody of the marshals who will see to your transportation and your sleeping arrangements. They will return you here tomorrow morning at 9:30 a.m.

As you break up, and maybe in groups, I would ask you not to discuss the case in small groups, but to continue your deliberations only tomorrow when you are back here in the jury room and have all reassembled.

The jury is excused and directed to return to resume its deliberations tomorrow morning at 9:30. Good night everyone.

(The jury retired at 10:35 p.m.)

THE COURT: Are these all the exhibits, Marshal?

THE MARSHAL: Yes, your Honor.

THE COURT: Mr. Guranich will have them for you in the morning.

1 Is there anything further, gentlemen?

2 MR. SCHATZ: No, your Honor.

3 MR. BERNSTEIN: No, your Honor.

4 THE COURT: Court is adjourned until tomorrow
5 morning at 9:30.

6 (Whereupon an adjournment was taken to October
7 20, 1977, at 9:30 a.m.)

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UNITED STATES OF AMERICA

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vs.

77 Cr. 553

4

JAMES C. THWEATT

5

New York, New York

6

October 20, 1977

7

9:30 a.m.

8

(The jury met in the jury room at 9:30 a.m.
to continue its deliberations.)

9

THE COURT: Is everyone here in the Thweatt
matter?

10

Mr. Thweatt, where is Mr. Bernstein?

11

MR. THWEATT: I was supposed to meet him at 9:15,
but I hear there was some goof-up on the subway system. He
didn't show so I came here to be here on time.

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THE COURT: Very well.

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I do want to note for the record that we have
just received two notes from the jury. I will not respond
to those notes until Mr. Bernstein arrives.

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Let the record reflect that the first note,
which we will mark Court's Exhibit No. 5, requests a copy
of the Court's charge. That will take approximately an hour
and a half if it has to be read in total.

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The second note, which will be marked Court's
Exhibit 6, is merely a request meant for the marshal to
call a number for a juror.

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So, Mr. Guranich, we won't have it marked as a

1 court exhibit. Will you just give this particular note to
2 the marshal and ask him to make the telephone call requested
3 by the particular juror.
4

5 Let the record reflect that though there were
6 two notes, one was merely a request by a juror to make a
7 telephone call. The other which requests a copy of the
8 Court's charge will have to be responded to by the Court
9 as soon as Mr. Bernstein arrives.

10 I will proceed now with the order to show cause
11 which was returnable this morning, and then we will proceed
12 to the trial which is presently scheduled to begin at ten
13 o'clock.

14 (At 10:55 a.m. the following took place.)

15 THE COURT: Good morning, Mr. Schatz and Mr.
16 Bernstein.

17 Mr. Bernstein, at 10:00 a.m. we received a note
18 from the jury and it will be marked Exhibit 5. The note
19 reads, "A copy of the Judge's Charge to the Jury."

20 I have not yet, of course, communicated with the
21 jury with regard to this note, and in view of the fact that
22 the charge has not been transcribed, I proposed to bring
23 out the jury and indicate that fact and then ask them if
24 there is a particular portion of the charge or portions of
25 the charge which they want and, if so, if they would send

me another note and we will respond promptly; is that agreeable?

MR. BERNSTEIN: Yes.

THE COURT: I prefer not to have any individual member of the jury speak and say, "I want to hear this or that," and that is why I propose they go back and send me a note. I may indicate if they want something, for example, to know the elements of one or another charge, that might be a good example for them so that they will know they can focus on something, such as burden of proof or reasonable doubt.

MR. SCHATZ: Or consciousness of guilt.

THE COURT: I think the best and most neutral, if I can use an example with your joint consent, is with respect to the elements.

(The jury took its place in the jury box at 11:00 a.m.)

THE COURT: Good morning, ladies and gentlemen. I hope that you were all comfortable last night and you all are well this morning.

We received your note, which I have marked Court's Exhibit 5, which requests a copy of my charge to the jury. We do not have a copy of the charge. I will tell you that I worked from a fairly complete draft, but then I

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added and subtracted things, as I proceeded along. Therefore, in order for you to have a precise version of what you heard, it will be necessary for us to have the charge read back to you by the court reporter who took it down. A reading of the entire charge would, of course, take approximately as long as it took me yesterday, which was probably something in the neighborhood of an hour and a half.

In the event you want the entire charge, beginning to end, read back to you, we are ready, willing and able to do it.

But in my discussion with counsel, we thought possibly you might want one or another portion of the charge read to you. For example, you might want to hear the elements of one or another of the charges, or something else. Needless to say, if all of you want to hear the charge from beginning to end, we are prepared to proceed in a few moments. If you want a particular portion of the charge, or portions -- and I don't limit you at all -- I don't want to limit you -- if you want a particular portion or portions of the charge read back, I would guess the best way for us to do that is to send you back into the jury room so that you could send out another note. We are all here and we would respond very promptly to that request.

1 mmmm
2 I am going to excuse you now to go back in the
3 jury room. If you want the entire charge read, let the
4 marshal know and you will be brought back promptly. If you
5 want a portion or portions read, then just send a note and
6 we will try to be equally prompt in getting right to those
7 portions and having you back in the courtroom so that you
8 can proceed.

9 The main thing, I want you to be in position
10 to see and hear everything that you want to see and hear.
11 So we will excuse the jury. We will await word from you
12 as to which of the various suggestions is acceptable to you.

13 Thank you.

14 (The jury retired to the jury room.)

15 THE COURT: Does anybody wish to comment?

16 MR. SCHATZ: No.

17 MR. BERNSTEIN: No.

18 (The following took place at 11:10 a.m.)

19 THE COURT: A note was received from the jury
20 at 11:07, and we have marked it as Court's Exhibit 6. It
21 reads as follows:

22 "Elements of the charge relating to Counts 1-19."

23 Then it continues, "Any part of the charge re-
24 lating to the jury's responsibility in considering the
25 defendant's intent (relating to Counts 1-19)."

1
2 I am going to see if we can locate that or those
3 portions of the charge, and then as soon as we have done so,
4 I will bring the jury out and ask that the reporter read
5 the portions to the jury.

6 (Pause.)

7 THE COURT: I would like the record to reflect
8 that I have now reviewed the charge with counsel and have
9 selected portions which I believe are responsive to the
10 note from the jury. Before I hear from counsel, I would
11 like the record to reflect that yesterday, when I originally
12 read the charge to the jury, it was pointed out to me at
13 the side bar afterwards that I misread a date. What I
14 should have read was "In 1973 Mrs. Anna B. Ricca deeded
15 the property at 121 East 121st Street in Manhattan to
16 Streetworkers, Inc."

17 It was pointed out to me that I had inadvertently
18 misread the date. It was indicated by the Court to counsel
19 that the option at that time was that I either correct the
20 date immediately, that is, indicate the error to the jury,
21 or that we await a request from the jury to hear that par-
22 ticular portion of the charge. It was agreed by all con-
23 cerned that we should adopt the latter course. Since that
24 particular sentence is now going to be included in the
25 reading, I have with the consent of counsel directed the

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1 court reporter to change the inadvertent error, so that he
2 will read the year as 1973, which is the way I intended it
3 in the first place.
4

5 Is that change agreeable to both sides?

6 MR. SCHATZ: Yes.

7 MR. BERNSTEIN: Yes.

8 THE COURT: Very well.

9 Now, I have indicated to you what I believe
10 should be read in response to the jury's note. Are there
11 any requests that I read additional portions of the charge?

12 MR. BERNSTEIN: Yes, your Honor. I think in
13 fairness, and to be complete, since the jury is asking for
14 all portions of the charge relating to the defendant's
15 intent, I think it only right that the Court must indicate
16 the applicable standards to the jury in light of the por-
17 tions of the charge that I think the Court is about to
18 read, which in my opinion is a trifle lopsided from the
19 defendant's point of view; and, secondly, that it is clear
20 to me that character also goes to the question of intent
21 and should be considered by the jury, along with any other
22 charge, since it certainly pervades Counts 1 through 19,
23 as well as the balance of the counts in this particular
24 case.

25 THE COURT: I am looking at my charge on

character evidence. I do not believe that reading the portion of my charge on character evidence is responsive to this note. It may be that a subsequent note will come out and when I receive any subsequent note, I may determine that it would be appropriate as responsive to that particular request.

Unless the Government agrees with Mr. Bernstein, it is my disposition not to read that portion of my charge concerning character evidence.

MR. SCHATZ: We concur with the Court. The Court was fastidious in tracking those portions of the charge which conform to the jury's request.

MR. BERNSTEIN: We don't say the Court was not fastidious.

THE COURT: Are there any other objections which you wish to note, Mr. Bernstein?

MR. BERNSTEIN: Yes. I do not believe that the Charge, 21 and 22, fairly fall within the ambit of the request by the jury, and, again, I think they unduly tend to emphasize a portion of the case. The question specifically -- well, not specifically -- calls for a request with respect to the defendant's intent. 21 and 22, in essence, are evidentiary matters which talk about how the question of intent should be decided under certain circumstances.

1 That is why I felt 26 was appropriate, since that should
2 also be considered, along with 21 and 22. If a false ex-
3 culpatory statement should be considered, then so should
4 character witnesses be considered in deciding whether the
5 criminal intent of an individual has been proven beyond a
6 reasonable doubt.
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8 THE COURT: Well, with respect to Request 22,
9 which is basically on matters of similar acts, I have
10 definitely indicated -- and you can look at page two of
11 the request which I recall having been granted -- that
12 the jury could consider similar acts on the question of
13 intent. So I think that certainly 22 is appropriate.

14 As far as consciousness of guilt, we do talk
15 about that earlier in connection with my discussion of
16 intent.

17 MR. BERNSTEIN: I don't mean to interrupt the
18 Court. I simply point out one can have consciousness of
19 guilt and one can have a lack of consciousness of guilt.

20 THE COURT: If the jury should ask for anything
21 on reasonable doubt, I tell you now that I will give you
22 your character witness charge. Certainly, the thrust of
23 the character evidence point does go to reasonable doubt.
24 Therefore, I am telling you now that if they ask about
25 reasonable doubt, I am going to accede to your request.

But they don't here. They talk about the matter of intent.

MR. BERNSTEIN: Can I simply point out I believe that Request 26 is the flip side or the other side of Request 21. I believe it shows lack of criminal intent, not simply reasonable doubt. Reasonable doubt is the ultimate question in a jury trial. And, of course, subsumed within that is the entire question of intent. I think it must be determined with 26 if you read 21. If you don't read charge 21, then perhaps charge 26 would be inappropriate.

MR. SCHATZ: Character evidence has nothing to do with the facts of the case. The consciousness of guilt in the case is not his general character and has absolutely no basis.

MR. BERNSTEIN: Without meaning to belabor the point, I think character can negative consciousness of guilt. If you want to leave out 21, then I will withdraw my request as to 26. But 26 should be read with 21.

THE COURT: Anything else?

MR. BERNSTEIN: That is it, your Honor.

THE COURT: I have determined to adhere to my original decision, which is to read the portions of my charge which relate to false exculpatory statements, which reflects on the matter of consciousness of guilt and similar acts, which I suggest reflect on intent. And I have concluded

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2 that the matter of character evidence is not responsive to
3 this particular question. The jury had asked originally
4 for the entire charge, and if they wanted the whole of
5 the charge, of course, they would have gotten it. But
6 they are asking now for a lesser portion, and I think that
7 under the circumstances I will adhere to the determination
8 that I made.

9 Mr. Schatz, I believe that you had indicated
10 you had something that you wanted me to read. Why don't
11 you put that on the record and I will be prepared to rule
12 on that as well.

13 MR. SCHATZ: The Government believes that
14 Request No. 6 ought to be read. It clearly goes to the
15 issue of intent, your Honor.

16 THE COURT: I have ruled just as I did against
17 Mr. Bernstein, that the portion of Request No. 6 which you
18 referred to, so the record is clear, the second paragraph
19 of that request as I modified it, is also beyond the scope
20 of the jury's note. Accordingly, the application that you
21 make that I read that is denied.

22 Is there anything further, gentlemen?

23 MR. SCHATZ: No.

24 MR. BERNSTEIN: No, your Honor.

25 (The jury took its place in the jury box at 11:50
a.m.)

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2 THE COURT: Ladies and gentlemen, at approxi-
3 mately 11:07 we received your note, and that has been marked
4 as Court's Exhibit 6. You requested certain material:
5 "Elements of the charge relating to Counts 1 - 19. Any
6 part of the charge relating to the jury's responsibility
7 in considering the defendant's intent (relating to Counts
8 1 - 19)."

9 I have conferred with counsel and I have in-
10 dicated to counsel portions of the charge which I believe
11 that you want. I can fairly say that both counsel indicated
12 there were additional portions of the charge which were
13 responsive to your note. I have made the initial deter-
14 mination. We are going to read what I think you want,
15 but I am issuing an invitation if I have omitted something
16 that you heard or think you heard, then I solicit another
17 note if you feel it appropriate, because in the attempt
18 to focus in on your thinking, I selected the portions I
19 thought to be appropriate, and I suppose the only way to
20 satisfy everyone totally and completely is to read the
21 whole charge, and you came back with a request for a por-
22 tion. So I do want to indicate to you that if in my trying
23 to answer your note I omitted something that someone wanted
24 to hear on any subject, you go back in there, send me another
25 note, and we will renew our efforts to comply with whatever

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2 you request.

3 Mr. Reporter, will you turn to the portions of
4 the charge which we have selected.

5 (The reporter read as follows:

6 "In order to find Mr. Thweatt guilty of any
7 of Counts 1 through 36, the so-called false statement
8 counts, the Government must prove beyond a reasonable doubt
9 that:

10 "One, and you would address yourselves to the
11 counts one at a time, for each count on or about the date
12 set forth in the indictment, the defendant made or caused
13 to be made a false statement, use or cause to be used a
14 false document, or by trick, scheme or device concealed
15 a material fact...")

16 THE COURT: Just a moment.

17 Let the record reflect that I am going to
18 excuse the jury for a few moments. I note the hour and
19 have deemed that it would be appropriate for the jury to
20 eat in. I am going to give the jury just a few moments to
21 compose their requests for food, and then as soon as that
22 has been done, we will resume with the reading.

23 Is that agreeable, gentlemen?

24 MR. SCHATZ: Yes.

25 MR. BERNSTEIN: Yes.

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2 THE COURT: The jury is excused, and as soon
3 as you are ready, we will begin.

4 (The jury retired and returned to the jury box
5 at 12:20 p.m.)

6 THE COURT: Ladies and gentlemen, we had this
7 brief recess to enable you to order lunch. You recall that
8 when we interrupted, our court reporter had just begun his
9 reading. I have asked him to begin again, so that he will
10 read right from the beginning the portions that you have
11 selected.

12 (The reporter read as follows:

13 "In order to find Mr. Thweatt guilty of any of
14 Counts 1 through 36, the so-called false statement counts,
15 the government must prove beyond a reasonable doubt that:

16 "One, and you would address yourselves to the
17 counts one at a time, for each count on or about the date
18 set forth in the indictment, the defendant made or caused
19 to be made a false statement, used or caused to be used a
20 false document, or by trick, scheme or device concealed
21 a material fact.

22 "Two, such false statement or document or
23 concealment was made or used in a matter within the juris-
24 diction of a department or agency of the United States
25 and,

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2 "Three, the defendant's action was done know-
3 ingly and wilfully.

4 "I will now discuss each of the three elements
5 which I have just referred to.

6 "You will recall that the first element which
7 the government must establish is that the defendant made
8 a false statement, used a false document or concealed a
9 material fact.

10 "The government has presented evidence the
11 monthly cost reports for the Legal Pro program were
12 submitted to the New York City Criminal Justice Coordinating
13 Council, which has been referred to in a shorthand way as
14 CJCC, and then to the New York State Department of Criminal
15 Justice Services referred to as DCJS, which in turn incor-
16 porated the information contained in the monthly reports
17 in reports which it submitted to LEAA, an agency of the
18 United States Department of Justice as part of and pursuant
19 to the so-called LEAA grant program.

20 "The questions which you must focus on with
21 respect to each of Counts 1 through 36 therefore are:

22 "One, did the monthly report covered by that
23 count contain false statements or use false documentation
24 or conceal a material fact.

25 "Two, if so, did the defendant, James Thweatt,

make or cause to be made such false statement, use of false documentation for such concealment?

"In connection with these questions the law does not require that the defendant have committed every act comprised in the offense itself in order for him to have committed the crime charged here.

"The defendant may be held responsible under the so-called 'Aiding and Abetting' statute, 18 U.S.C. Section 2, which is also charged as having been violated in Counts 1 through 36.

"That section, the so-called 'Aiding and Abetting' statute, provides:

"Whoever aids, abets, counsels, commands, induces or procures the commission of an offense against the United States is punishable as a principal. Whoever wilfully caused an act to be done which if directly performed by him' -- I will skip some words -- 'would be an offense against the United States, is punishable as a principal.'

"Thus, if you find that Mr. Thweatt concealed or induced or procured or caused another person to conceal a material fact or to make a false statement or to use a false document, then you may find the first element satisfied.

"If, on the other hand, you are not satisfied beyond a reasonable doubt that he did so himself or through

1 someone else, then you must acquit as to the particular
2 count under consideration.
3

4 "It is not necessary that the person who ulti-
5 mately submits the reports be aware that they were false.
6 If you find that the defendant caused the false statements
7 to be made in the first instance as to the first element
8 in Counts 1 through 19, in determining whether the state-
9 ment or representation or document was material and false,
10 fictitious or fraudulent, the question for you to decide
11 as to each of these counts is whether it reported rent
12 in excess of the true rent or whether it contained false
13 documentation in the form of Hollow checks to Street-
14 workers and later the rent receipts of 121 Management.

15 "In resolving the first element you should
16 keep in mind that a statement, representation or document
17 is false if it was untrue when made and was then known
18 to be untrue by the person making it or causing it to be
19 made.

20 "A statement or document is fictitious if it
21 is not real or if it does not correspond to what actually
22 occurred. A statement, representation or document is
23 fraudulent if it was falsely made or caused to be made
24 with intent to deceive.

25 "On Counts 1 through 19 the question you must

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focus upon as to each monthly report is whether the report contained material false statements concerning the rent or contained false and deceptive documentation concerning alleged payments.

"You need not find that all of the entries on the reports were false. It is sufficient if you find that one or more entries were false, so long as you are unanimous as to the specific false item."

"Knowledge and wilfulness and criminal intent, as I indicated to you before, directs you to be concerned with the subject of people's states of mind. This is a subject with which we regularly deal in real life as well as here in the courthouse.

"But it is a subject, as you know, of some subtlety and complexity. Now, after all, you cannot look into a person's mind or into his head to see what the person is thinking.

"Knowledge, guilty knowledge, intent to defraud, criminal intent, are things respecting which we cannot normally rely on so-called direct evidence, that is what we see or hear with our own senses. We cannot rely normally on so-called direct evidence when we are trying to determine whether a person has or had such knowledge or such intent.

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2 "On occasion, of course, we do have direct
3 evidence. A person may make a statement or may write a
4 letter saying this is what I know, this is what I intend
5 or this is what I intended or this is what I didn't know.

6 "All of that, things you could see with your
7 eyes, if it were a letter, hear with your ears, if it
8 were a statement, all of that is what we call direct
9 evidence.

10 "However, the fact that there is direct
11 evidence does not necessarily mean that it is the best
12 evidence because people do not always write or speak the
13 truth about what they think or intend. So we have another
14 type of evidence. It is called circumstantial evidence
15 and just as you will consider direct evidence you will
16 consider all the circumstantial evidence in the case in
17 determining whether the alleged intent to defraud, the
18 criminal intent that we speak of, has been made out with
19 respect to Mr. Thweatt.

20 "The existence or non-existence of guilty
21 knowledge or criminal intent is something commonly to be
22 inferred from what I have just called circumstantial evi-
23 dence as distinguished from direct evidence.

24 "Circumstantial evidence is evidence of facts
25 and circumstances from which one may infer connected facts

which reasonably follow in the common experience of mankind.

"Stated somewhat differently, circumstantial evidence is that evidence which tends to prove a disputed fact by proof of other facts which have a logical tendency to lead the mind to a conclusion that those facts exist which are sought to be established.

"Circumstantial evidence is of no less value than direct evidence for in either case whether the evidence be direct or circumstantial or a combination of both, you must be convinced beyond a reasonable doubt of the guilt of the defendant.

"Let us take one simple example, an example which is often used in this courthouse to illustrate what is meant by circumstantial evidence.

"Assume that when you entered the courthouse this morning the sun was shining outside and it was a clear day. There were no clouds in the sky, there was no rain. Assume that the drapes on the windows which are before you are drawn and you cannot look outside. Assume that you are sitting in your jury box and despite the fact that it was sunny and dry when you entered the building you hear a pitter-patter on the window and then you turn and someone walks through the courtroom with an

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2 umbrella dripping water, followed in a short time by a
3 person wearing a raincoat and the raincoat is dripping
4 water.

5 "Taking our assumption, you cannot look out
6 the window to see directly whether it is raining or not
7 and if you are asked is it raining you cannot say that
8 you know this of your own knowledge but certainly upon
9 the combination of the facts as I have given them to you,
10 even though you may have entered the courthouse in sun-
11 shine, it would be logical and reasonable for you to
12 conclude that it's raining now.

13 "That is about all there is to circumstantial
14 evidence. You interpret on the basis of reason and ex-
15 perience from an established fact the existence of some
16 further fact.

17 "What do you consider when you try to figure
18 out whether somebody acted purposely, intentionally and
19 with knowledge of one thing or another?

20 "Well, you do this all the time in real life.
21 You consider who the person is, what the circumstances
22 are, the level, so far as you know it, of the person's
23 intelligence, education and sophistication, the means
24 of information available to that person or at his
25 disposal, the plausibility of supposing a person acted

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deliberately or not deliberately.

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"You consider, in short, all the circumstances and put them together in the whole setting of the case and you decide from all of the evidence with respect to the defendant whether or not he acted knowingly and wilfully and with criminal intent during the period covered in this case.

"In a financial sense what you have here, at least to some extent, you may find more specific things to consider in determining knowledge and wilfulness. So you will consider things that I will mention to you just illustratively and then add to them all the things that you know from all the diverse experiences you have had in deciding this question of intent.

"The kind of wrongful purpose that is charged throughout this case may be refuted or partly discounted by evidence to the extent you find there is such evidence that the actions in question were taken openly and normally with full disclosure, with clear and standard records and, in general, in a business style of proceeding that is inconsistent with the kind of wrongful, fraudulent, deceptive kinds of purpose charged in this indictment and claimed by the government to have proven.

"By the same token, if you find that normal

2 business routines were not followed and that the true
3 facts were concealed by means of false documentation, such
4 facts may indicate a wilful intent to deceive or mislead by
5 so-called criminals.

6 "Indeed you may find that even otherwise
7 proper business activities may be misused for a fraudulent
8 purpose.

9 "So I say in sum, that on the element of whether
10 the defendant acted knowingly and wilfully and with crimi-
11 nal intent, it is for you finally to review and put
12 together all of the circumstances in deciding whether or
13 not that element has been established by the government
14 beyond a reasonable doubt with respect to Mr. Thweatt."

15 - - -

16 "There has been evidence that Mr. Thweatt
17 made certain statements before the New York City Depart-
18 ment of Investigation in June of 1974 tending to show his
19 innocence in particular statements which tended to conceal
20 the fact that Iris Rucker is his sister.

21 "There has also been evidence that the
22 government contends that these statements were false when
23 made.

24 "I charge you that so-called exculpatory
25 statements when shown to be false are circumstantial

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evidence of consciousness of guilt and have independent probative force.

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"In addition, the government has submitted evidence that Mr. Thweatt suggested to Walter Watson prior to Mr. Watson testifying before the grand jury, that he did not have to remember certain matters even if he were given immunity from prosecution.

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"If you credit this evidence may may consider it as evidence of Mr. Thweatt's consciousness of guilt.

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"In the same vein, you may consider the testimony of Mr. Joseph McNally, the handwriting expert, that in his opinion the handwriting exemplars given by Mr. Thweatt to a representative of the FBI were not true samples of Mr. Thweatt's handwriting.

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"If you find that Mr. Thweatt disguised his handwriting you may, but need not, infer consciousness of guilt.

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"The government has put in evidence which it claims shows acts by the defendant with regard to the property at 161 East 121st Street similar to those charged in Counts 1 through 19 and 37 which relate to the matters at the storefront.

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"The government contends that the evidence which it presented shows the following:

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2 "In 1973 Mrs. Anna B. Ricca deeded the prop-
3 erty at 161 East 121st Street in Manhattan to Streetworkers,
4 Inc. Streetworkers used the property for a drug rehabili-
5 tation program it administered which was funded by the
6 Addiction Services Agency, which has been referred to
7 here as ASA.

8 "In June 1973 Streetworkers, Inc. filed a
9 lease with ASA whereby Streetworkers, Inc. would rent
10 the property from 121 Management Company as of an earlier
11 date, namely November 1972.

12 "Mr. McNally testified that in his opinion
13 James Thweatt signed the name of his sister Iris Rucker
14 to this lease on behalf of 121 Management Company. Iris
15 Rucker testified that she signed the lease.

16 "In accordance with the lease, Streetworkers
17 paid rent to 121 Management Company of \$800 per month and
18 subsequently \$1400 per month and was reimbursed for these
19 amounts by ASA.

20 "The government contends that this was not
21 valid rent since Streetworkers themselves had acquired
22 this building.

23 "In addition, the government argues, the
24 evidence shows, that the rental payments for the 121st
25 Street property along with rental payments for the Legal

Propinquity Madison Avenue storefront were deposited to the account of 121 Management and subsequently transferred to the defendant's own bank accounts.

"On the other hand, the defendant contends that 121 Management Corporation was a legitimate business venture in which Iris Rucker has invested \$4,000 of her own money. While the defendant is not on trial for these acts you may nevertheless consider these acts with respect to the charges in Counts 1 through 19 and 37 on the question of guilty knowledge or unlawful intent, preparation, plan and absence of mistake or accident.

"You may also consider this evidence as it affects your assessment of the question whether 121 Management Company was the legitimate recipient of rents of the Legal Pro program and whether 121 Management Company was performing legitimate management services or was merely a device for the transfer of program funds from Legal Pro to Mr. Thweatt.

"Thus, you may consider this evidence for these limited purposes only in connection with Counts 1 through 19 and 37.")

THE COURT: Ladies and gentlemen, we have completed the reading of the selected portions of the charge. I will reiterate that in the event any of you

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2 have not heard what you wanted to hear, to let me know.
3 I will await any additional note or request in that regard.

4 In the meantime, I am going to send the jury
5 back to continue their deliberations.

6 (The jury retired to the jury room at 12:55 p.m.)

7 MR. BERNSTEIN: In the light of some of the
8 language contained in Request 10, it makes it appropriate
9 for Count 26 to be charged at this time. It would be
10 absolutely appropriate for that portion of the charge
11 on character to be read in light of the statement read
12 in the third element, which was the element in my judg-
13 ment they were most interested in.

14 MR. SCHATZ: Your Honor has ruled. It is
15 obviously a matter within the Court's discretion, and
16 the Court was right. They asked for intent and you gave
17 them those portions that were appropriate on the issue
18 of intent.

19 MR. BERNSTEIN: If the language had not been
20 in the charge, perhaps I would not have said anything at
21 this juncture. But that language makes it exactly appro-
22 priate, because if character evidence is put in, it is
23 put in for that.

24 MR. SCHATZ: Mr. Bernstein objected to that
25 portion being read that he refers to now.

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2 THE COURT: I think I made it quite clear to
3 the jury that the Court has selected portions of the charge,
4 that counsel did not agree with the Court in all parti-
5 culars, and I invited the jurors, both before the portions
6 were read and after, to ask for anything else that they
7 wanted. Under the circumstances, I am prepared, frankly,
8 to await further requests from the jury. Therefore, I
9 will deny the renewed application that you make at this
10 time, Mr. Bernstein, to have the request on character
11 evidence read to the jury.

12 Mr. Bernstein, I would like the record to
13 reflect that I had observed you standing, that you stood
14 up as the jury was beginning to file out. I would assume
15 that it was your desire to bring this particular exception
16 to my attention before the jury had actually left the
17 courtroom. I will tell you now that had you done so,
18 I would have ruled the same as I did. It was not a con-
19 sideration of my ruling that the jury had already left
20 the courtroom. I had determined earlier that that parti-
21 cular portion of my charge was inappropriate and, frankly,
22 nothing I heard during the reading or that you brought to
23 my attention after the reading would have changed my view
24 on this. So I do want to make it clear on the record
25 that my ruling would have been the same if you had

gotten up immediately, that is, before the jury started to leave the box. I would like the record to be clear on that.

I consider that you made a timely request that this be read to the jury.

MR. BERNSTEIN: Thank you very much, your Honor.

MR. SCHATZ: Again, the portion which Mr. Bernstein just alluded to was as his new basis for his request something that was in the Court's charge initially and Mr. Bernstein did not object to it being read to the jury.

MR. BERNSTEIN: Mr. Bernstein is not objecting to its being read. I just want something additional.

THE COURT: I recall there were literally no exceptions to the charge as it was delivered. Mr. Bernstein says a full response to the jury's note would require more reading of the charge.

MR. SCHATZ: As I did.

THE COURT: The alternative would have been to read everything that both of you wanted or to read the entire charge. The jury made it clear that they did not desire the entire charge to be read back and, therefore, I was left to make a determination, and in this determination

I did deny applications from each of you.

MR. BERNSTEIN: I will say this for the Government, that if they would agree I would stipulate that having so-called Request 6 read back, they would permit Request 26 to be read back.

THE COURT: We will await a further note from the jury at this point.

At this time I think it appropriate to excuse counsel for lunch. It is one o'clock. I will ask counsel and Mr. Thweatt to return at 2:00 p.m.

MR. BERNSTEIN: Very well, your Honor.

(Luncheon recess taken.)

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(At 3:10 p.m. the following took place.)

THE COURT: I have a note from the jury which I have timed in at 3:05 p.m. and marked Court's Exhibit 7. The note reads as follows:

"If a person has a very good intent and purpose, does this intent and purpose make lying to a government agency not a crime? Does this very good intent and purpose mean that this individual had no criminal intent when he or she lied to a government agency?"

I suggest, gentlemen, that the time has come to read Request No. 6, which sets forth the purpose of

Sections 1001.

MR. BERNSTEIN: And Request No. 26.

MR. SCHATZ: It has nothing to do with the jury's question, your Honor.

MR. BERNSTEIN: Judge, there has to be a balanced charge. I think it absolutely pervades the course of the entire jury deliberations here, and I firmly believe that in order to be fair about it, your Honor should indicate this to the jury.

MR. SCHATZ: I could not disagree more. The question was a specific one.

THE COURT: The application by counsel to read the request regarding character evidence is denied. I would ask the court reporter to locate the particular portion of the charge, and we will bring the jury in. I suggest it is immediately before the first portion that you read to the jury previously.

(Pause.)

THE COURT: I understand, Mr. Bernstein, that you object to my reading that portion of my charge which covers Request No. 6; is that correct?

MR. BERNSTEIN: That is correct.

THE COURT: What is your alternative proposal?

MR. BERNSTEIN: My first request is that you

not respond to the note, other than to indicate that you have charged the elements of the crime, that if they want to have some specific portion reread, that might perhaps be appropriate, but the question in the form as raised is not answerable by you, but is essentially answerable by them, the triers of the fact.

MR. SCHATZ: That gives the jury no guidance, and I think there is a specific request. The Court has already given that which does provide the jury with the appropriate guidance. Mr. Bernstein's solution would make the jury the finders of the law, not just the facts.

THE COURT: I will reject your first alternative, Mr. Bernstein. If you have a positive response that you would suggest, I will hear you on it.

MR. BERNSTEIN: Very well, your Honor. I have hastily written some, which I have shown to my adversary, and he rejects.

THE COURT: I would like to hear the language you propose, and I do hope you have the authority to support it.

MR. BERNSTEIN: I have previously outlined intent under the statute. I think we can agree to that extent. It is for you the triers of the fact to determine if criminal intent has been shown beyond a reasonable doubt.

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2 I can reread that portion of the charge again, if you wish.

3 That is the language that I respectfully urge
4 upon the Court. I don't believe it needs any supplemental
5 authority.

6 MR. SCHATZ: That is not the question the
7 jury has asked. They have implied that they want to
8 know if there is an excuse for lying, and your charge,
9 which is Request No. 6, is appropriate. We think that
10 you can read the entire Request No. 6. But we have no
11 problems, if the Court thinks it more appropriate to
12 read just the last sentence.

13 THE COURT: No. I don't want to take that
14 last sentence out of context. I think to give the ques-
15 tion a proper response I should not just say that there
16 is no response. I should not refer to the other portions
17 of the charge; I should read that portion of the charge
18 which responds, if there is a portion of the charge, or
19 give the jury supplemental instructions if there is
20 nothing in the charge. I would agree that the portion
21 of the charge which I have selected does provide the
22 appropriate response, one which was ratified by the
23 Second Circuit in U.S. v. Corr.

24 Bring in the jury.

25 MR. BERNSTEIN: Before you do that, may I

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make one other comment? If your Honor is just going to read the last sentence, may I respectfully request --

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THE COURT: No, no, I am not. I think that that is taking it slightly out of context and I feel to benefit you that I should read the entire portion, and I am doing it for that reason.

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If you in lieu of having the entire portion read just want the last sentence, of course, I will listen to you.

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MR. BERNSTEIN: Perhaps I misunderstood. Which words are you going to read?

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THE COURT: I am going to read all of Request No. 6 in total, because if I just read the last sentence, it is probably much stronger against the position that you take and, therefore, to put the matter in what I believe to be the context of the charge as delivered, I intend to have the entire Request No. 6 read.

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MR. BERNSTEIN: May I simply request, then, of the Court that since the words "wilful and intentional" are referred to, or the words "wilfully and intentionally" are referred to in the last sentence, that if you do not choose to reread what has been delineated Request No. 10, which talks about that portion, at the very least, remind the jury that you have previously defined wilfully and

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2 intentionally in another part of the charge which was
3 reread to them and which is relevant to this particular
4 portion of the charge.

5 MR. SCHATZ: Your Honor, I think that ques-
6 tion implies that they have no problem with wilfully and
7 intentionally and now they just want to have a clarifi-
8 cation of the specific question.

9 THE COURT: I don't think that that sugges-
10 tion really responds to the jury's question. Therefore,
11 I will just proceed along the lines I have indicated.

12 Please send the jury in.

13 (At 3:25 p.m. the jury took its place in the
14 jury box.)

15 THE COURT: Good afternoon, ladies and gentlemen.
16 We have received a note from you. It came to us by our
17 watches at 3:05 p.m., about 25 minutes ago, and we have
18 marked that Court's Exhibit 7. It contains two questions.
19 I will read them:

20 "If a person has a very good intent and pur-
21 pose, does this intent and purpose make lying to a
22 government agency not a crime?"

23 "Does this very good intent and purpose mean
24 that this individual has no criminal intent when he or
25 she lied to a government agency?"

I have considered your note and I am going to ask the court reporter to read another portion of the charge which I delivered yesterday, and not read before. This is a shorter portion of the charge.

I suggest, however, you consider this portion along with the entire charge which was given to you yesterday.

Mr. Reporter --

(The reporter read as follows:

"The purpose of Section 1001 of Title 18 of the United States Code is to protect the authorized functions of the various governmental departments and agencies from any type of misleading or deceptive practice.

"It is not necessary, however, to prove that in fact the governmental agency, in this case LEAA, a part of the U.S. Department of Justice, was misled as a result of the statement if you do find in fact that the statement was false.

"Neither is it material that the agency was not misled or even that it knew of the falsity of the statement should you so find.

"The law recognizes no excuses or justification for a false, fictitious or fraudulent statement wilfully and intentionally made to a department or agency of the

United States.")

The court reporter has completed the reading of my charge which I selected. However, since I was not in the jury room when this question was being made up, if the portion of the charge which was read and taken by you in the context of the entire charge as delivered does not answer both of those questions, we will remain available for any additional note or notes which you wish to send out.

The jury is excused and directed to resume their deliberations.

(The jury retired to continue its deliberations.)

(At 4:40 p.m. the following took place.)

THE COURT: We just received a note from the jury which we will mark Court's Exhibit 8, and we will time it in at 4:40 p.m. It reads as follows:

"Letter or evidence relating to a move by Streetworkers from 1686 premises to 1680 or 1682 Madison Avenue to support increase in rent from \$325 to \$800 a month (if any)."

MR. SCHATZ: That is Government's Exhibit 36, your Honor.

THE COURT: Let us see it. There is nothing else?

MR. SCHATZ: Arguably, 33.

THE COURT: I have looked at 36 in evidence and I believe that the exhibit does contain evidence responsive to the jury's question.

I have also looked at Government's Exhibit 33 in evidence and do not believe it contains any evidence in response to the jury's question.

Mr. Schatz, do you know of any other exhibit which would be responsive to the jury's question?

MR. SCHATZ: 38 is essentially a slightly modified version of 36. It has the same paragraph.

THE COURT: Mr. Schatz says that in addition to 36 the only other exhibits which he believes would arguably have anything in them would be 33. I have looked at 33. That does not seem to contain any material, but if you want to send that in, you may. Then he says 38. 38 seems to be duplicative of 36. So, let us first look at those.

Do you want to send anything more in than 36?

MR. BERNSTEIN: Only to the extent that I want to see the letter that was put in by Ferdinand.

THE COURT: Yes, that is Exhibit 180.

MR. LIVINGSTON: It is in that series.

THE COURT: 180 is a contract, as I recall it,

and 182 is a letter which I think was returned, and I think 183 is the original envelope. So through Mr. Ferdinand there were three exhibits put in, if you would like to look at them. Actually, I may be in error here. I am not sure that 182 was received.

MR. SCHATZ: It is.

THE COURT: 182 and 183. If you think there is anything in any of those, I will certainly consider them as well.

MR. BERNSTEIN: They don't seem to go to the tenor of the note.

THE COURT: Very well. Then if there is no objection I propose to send in Government's Exhibit 36 in evidence. It is a multipage document and I think it would be helpful to have the document opened to the page in these many pages which respond to the jury's question.

Is that agreeable, gentlemen?

MR. SCHATZ: Yes.

MR. BERNSTEIN: Yes.

THE COURT: Very well.

(Exhibit sent to the jury.)

(At 6:00 p.m. the jury took its place in the jury box.)

THE COURT: Good evening, ladies and gentlemen.

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2 I note the hour. I have conferred with counsel and deter-
3 mined to bring you out to give you certain options which
4 I suggest are available at this point.

5 Option one is to continue your deliberations
6 into the evening, or having supper brought in, or going
7 out for supper. You have the option of continuing to
8 deliberate and the option on the food would be something
9 brought in, or I make arrangements for you to go out.

10 I am well aware that you have been working
11 since early this morning, and there is the option also
12 to send you back to your motel now, or in a short time
13 should you want to complete some phase of your discussion,
14 and to bring you back tomorrow morning. It is inappropriate
15 for me on something like this to poll you while you are
16 in the box. I have asked you to come out here so I could
17 present the various options to you and then ask that you
18 return to your jury room, and if you have a consensus
19 view, certainly, and I have conferred with counsel and
20 we are agreeable to your wishes. If you have no consensus
21 view and say, "Judge, we can't agree on this particular
22 matter, on any of the options you have given us," well,
23 then, I will put my head together with counsel and try
24 to come up with an option. But I would prefer to give
25 you the opportunity in the first instance to tell us what

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2 you believe to be most beneficial.

3 So we will await a note from you that you either
4 want to keep deliberating with dinner in, go out for it,
5 or in the alternative, returning to the motel to return
6 tomorrow. Thank you.

7 (The jury retired to the jury room.)

8 (At 6:12 p.m. the following took place.)

9 THE COURT: I have two notes. These do not
10 pertain to the case itself and therefore I will merely
11 read them into the record so you know exactly what they
12 are, but I don't really think that any more need be done.
13 If anybody wants to mark it after that, fine.

14 The first note is from the jury:

15 "We would like to deliberate until eight
16 o'clock, eat out, then go to the motel. Will the same
17 arrangements be made for phone calls?"

18 The second note is from Juror No. 8:

19 "Judge Ward: I have a problem about tomorrow.
20 I am supposed to be going on a trip tomorrow at 6:00 p.m.
21 I have already paid for this trip, and if I cannot make
22 it, I will lose \$75. Is there anything that can be done
23 about this?

24 "Juror No. 8, Karen Dieckman."

25 Any comments? First of all, I don't think

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2 these need be marked as exhibits. I have read them in
3 toto to you.

4 MR. BERNSTEIN: I think the note from Miss
5 Dieckman should be marked.

6 THE COURT: Why don't we mark that as the next
7 court exhibit.

8 MR. SCHATZ: If she has a problem, I think we
9 should sit late. Your Honor, is there anything that the
10 Court can do vis-a-vis reimbursement if she misses it?
11 I don't know the answer to that. I am asking the Court.

12 THE COURT: I don't know that there is. She
13 is entitled to her juror's fee and mileage, basically. I
14 think not. And, obviously, I am concerned about all jurors
15 deliberating with a minimum of pressure. We are in the
16 fourth week, and that may be on their minds.

17 MR. SCHATZ: The only thing I am thinking, a
18 phone call from the Court to whoever she paid the deposit
19 may do some good. I'm just thinking about it.

20 THE COURT: I will tell you what my inclination
21 is at this point in view of this, to let them continue to
22 deliberate until eight o'clock and to inquire of them just
23 prior to that if they have reached a verdict, because if
24 they have, then this might make the matter academic. I
25 see no harm in it. If they have not, well, then, that is

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2 another story. My present disposition, then, gentlemen,
3 in view of the note which is now Court's Exhibit 9 from
4 Miss Dieckman, is to ascertain whether after a day and
5 a fraction of deliberations the jury has reached a unani-
6 mous verdict on any of the 38 counts.

7 At the present time I think we should do
8 nothing.

9 It is now, according to my watch, ten past
10 six. They have already asked to deliberate till eight,
11 and I think we should indicate to the marshal that he
12 should make arrangements for dinner for the jury for
13 eight-thirty.

14 THE MARSHAL: What about hotel reservations?

15 THE COURT: I think you have to keep it
16 available at this point. What I am trying to do is to
17 alleviate the problem and see where we are.

18 (A discussion was had off the record.)

19 THE COURT: Gentlemen, with reference to the
20 problem raised by Juror No. 8 and with reference to the
21 deliberations generally, at 7:30 I shall inquire if the
22 jury has reached a unanimous verdict on any of the counts,
23 and if I get back an answer no, that ends the matter. If
24 I get back a yes answer, it would be my disposition to
25 take whatever verdict there is, and then I will hear you

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2 gentlemen after I take that verdict. Think about that.

3 MR. BERNSTEIN: Do I have any options? Very
4 frankly, I have discussed it with my client, and my inclin-
5 ation is still the same, that if it takes two weeks, so
6 be it. But I on principle personally would be opposed
7 to a partial verdict.

8 MR. SCHATZ: At this time I will defer to the
9 Court's judgment.

10 THE COURT: The Court will defer its judgment
11 until 7:30. We will see. There may be another note which
12 might point to something. There may be something that
13 will arise which will dictate our decision.

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(At 6:35 a note was received
from the jury)

THE COURT: Gentlemen, I have just received
a note from the jury. I have timed it in at 6:38 p.m.
and marked it Court Exhibit 10.

The note reads:

"All charts illustrating the flow of funds
from LEAA to Streetworkers, their various bank accounts,
and the defendant. Also chart outlining Counts 20 - 36.
Also all evidence supporting Counts 20 - 36 (cancelled
checks and bank statements). A copy of the grant
award from CJCC to Streetworkers (including Attachment A)."

Would you see if you can assemble the
materials.

(Pause)

THE COURT: Gentlemen, I note that you
have accumulated a number of exhibits with reference to
the last note from the jury.

Mr. Schatz, if you would indicate the
exhibits that you and Mr. Bernstein have agreed upon so
we can note them in the record then I will have them
taken into the jury.

MR. SCHATZ: The first category of charts
are Government Exhibit 701, 702, 703 and 709.

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THE COURT: I note that they are all in evidence. Is that correct?

MR. BERNSTEIN: Yes, sir.

MR. SCHATZ: The next category are various checks, rather than going through them individually, 375 through 300-C.

THE COURT: Very well. I remember that group. Am I correct that they are all in evidence, Mr. Bernstein?

MR. BERNSTEIN: Yes, your Honor.

MR. SCHATZ: The next group are bank statements and that is Government's Exhibit 200, 202 and 203 all of which are in evidence.

THE COURT: Very well. Is that correct, Mr. Bernstein?

MR. BERNSTEIN: Yes, your Honor.

MR. SCHATZ: With respect to the requests of the grant award between CJCC to Streetworkers we have agreed that they should get both Government Exhibit 28, the grant award itself and Government Exhibit 30, the subcontract between CJCC and Hollow which incorporates the grant award by reference.

THE COURT: That includes Attachment A?

MR. SCHATZ: Yes, but let me quadruple

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2 check.

3 Yes.

4 THE COURT: Those are Exhibits 28 and 30
5 and they are both in evidence, is that correct, Mr.
6 Bernstein?

7 MR. BERNSTEIN: Yes.

8 MR. SCHATZ: 90-A through 90-K and 90-AA
9 which are a series of checks.

10 THE COURT: Gentlemen, do you agree that
11 this batch of exhibits which have been identified in the
12 record, all of which are in evidence, are the exhibits
13 which have been called for by the most recent note of the
14 jury which is Court Exhibit 10?

15 MR. BERNSTEIN: Yes, your Honor.

16 THE COURT: I would suggest that we
17 deliver them to the marshal with a request that he deliver
18 them to the jury.

19 Is that agreeable, gentlemen?

20 MR. SCHATZ: Yes, your Honor.

21 MR. BERNSTEIN: Yes, your Honor.

22 MR. SCHATZ: Just for the record, I previously
23 informed Mr. Bernstein and he consented to the fact that
24 with respect to Mr. McNally's blowups that the actual
25 mockups would be put into evidence but that Mr. McNally

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2 could actually retain the film.

3 Is that right, Mr. Bernstein?

4 MR. BERNSTEIN: Yes.

5 THE COURT: We will recess for a few
6 minutes and I suggest that we consider the matter of
7 possibly inquiring whether the jury has reached a partial
8 verdict. Perhaps each of you wants to consult with
9 whoever you want to consult with and then I will be in
10 the robing room and await your comments.

11 (Pause)

12 THE COURT: Gentlemen, it's going on 7:30
13 and I would propose to send the following note into the
14 jury:

15 "October 20, 1977, Members of the jury:

16 "1. Do you believe that you can reach
17 a verdict on all counts tonight?

18 "2. If your answer to Question 1 is no
19 have you reached a unanimous verdict on any count or
20 counts?

21 "Judge Ward."

22 I would solicit comments.

23 MR. SCHATZ: The only other question --
24 I guess that is fine.

25 MR. BERNSTEIN: We have no objection, your

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2 Honor.

3 THE COURT: Very well. I will time it at
4 7:30 p.m.

5 Mr. Guranich, would you give this note to
6 the marshal and ask him to give it to the jury.

7 (Pause)

8 THE COURT: Gentlemen, I have just received
9 a response from the jury at 7:32. I would indicate to
10 you as follows:

11 The jury has responded and the answer
12 with regard to my first question, "Do you believe that
13 you can reach a verdict on all counts tonight" is no.

14 The answer to my second question, "If your
15 answer to Question 1 is no have you reached a unanimous
16 verdict on any count or counts" they say yes, Counts 1 - 19.

17 Therefore we reach that point where I
18 certainly intend before we do anything with regard to
19 sending the jury home or anything else to take the
20 partial verdict.

21 I intend to do that but I would like to go
22 beyond that at this point. I will tell you now that if
23 their verdict is not guilty on Counts 1 through 19
24 then I will at this point send them back to their motel
25 and tell them to return tomorrow to continue their

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2 deliberations. The reason for that is I have no indication
3 from them that they are hopelessly deadlocked.

4 On the other hand, if their answer is that
5 they find Mr. Thweatt guilty on Counts 1 through 19, then
6 I will solicit your comments at this point.

7 I gather it would be the defendant's position
8 if that were the case that the defendant would be anxious
9 to move for a mistrial with regard to Counts 20 through
10 36, is that correct?

11 MR. BERNSTEIN: I would certainly move
12 for a mistrial at that point.

13 MR. SCHATZ: The government is of the
14 view that the jury should be permitted to deliberate
15 on the remaining counts and that the public's interest
16 would best be served by permitting them to deliberate
17 on those remaining counts.

18 THE COURT: Very well. We have the govern-
19 ment's position on the record and the Court will deal
20 with the matter.

21 It is my proposal that we bring in the jury
22 at this time.

23 I want to have clear in the record that
24 the defendant is agreeable to our taking a partial verdict
25 at this time.

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2 As I understand it, Mr. Bernstein, you have
3 consulted with Mr. Thweatt, is that correct?

4 MR. BERNSTEIN: Yes.

5 THE COURT: Do you agree to take a partial
6 verdict at this time?

7 MR. BERNSTEIN: Yes.

8 MR. SCHATZ: So the record is clear, the
9 Government's view is that, (1), we agree that taking of
10 a partial verdict is appropriate now; (2), we also
11 believe that whatever the jury says with respect to those
12 counts that they have reached a verdict, we think they
13 should come back tomorrow and deliberate further with
14 respect to those counts that they haven't made a determina-
15 tion on.

16 THE COURT: I will deal with the matter
17 after we ascertain the verdict on Counts 1 through 19.

18 (Court Exhibit 11 marked.)

19 (In open court; jury present.)

20 THE COURT: Good evening, ladies and gentlemen.

21 Mr. Guranich, would you take the roll of the
22 jurors to ascertain if all of our jurors are present.

23 (Roll call.)

24 THE COURT: Ladies and gentlemen, a short
25 while ago I sent a note in to you and shortly thereafter
I received a response. In view of the response I have

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2 determined to take what we call a partial verdict on
3 Counts 1 through 19.

4 At this time I will ask Mr. Thweatt to please
5 rise and the forelady to please rise.

6 Madam Forelady, has the jury agreed upon
7 a unanimous verdict on Count 1, yes or no?

8 THE FORELADY: Yes.

9 BY THE COURT:

10 Q What is the jury's verdict on Count 1?

11 A Guilty.

12 Q Has the jury agreed upon a unanimous verdict
13 as to Count 2?

14 A Yes.

15 Q What is the jury's verdict?

16 A Guilty.

17 Q Has the jury agreed upon a unanimous verdict
18 as to Count 3?

19 A Yes.

20 Q What is the verdict?

21 A Guilty.

22 Q Has the jury agreed upon a verdict as to
23 Count 4?

24 A Yes.

25 Q What is the verdict?

(4439)

1 qb-9

2 A Guilty.

3 Q Has the jury agreed upon a verdict as to Count

4 5?

5 A Yes.

6 Q What is the verdict?

7 A Guilty.

8 Q Has the jury agreed upon a verdict as to

9 Count 6?

10 A Yes.

11 Q What is the verdict?

12 A Guilty.

13 Q Has the jury agreed upon a verdict as to Count

14 7?

15 A Yes.

16 Q What is the verdict?

17 A Guilty.

18 Q Has the jury agreed upon a verdict as to

19 Count 8?

20 A Yes.

21 Q What is the verdict?

22 A Guilty.

23 Q Has the jury agreed upon a verdict as to Count 9?

24 A Yes.

25 Q What is the verdict?

1 qb-10 2140
2 A Guilty.
3 Q Has the jury agreed upon a verdict as to
4 Count 10?
5 A Yes.
6 Q What is the verdict?
7 A Guilty.
8 Q Has the jury agreed upon a verdict as to Count
9 11?
10 A Yes.
11 Q What is the verdict?
12 A Guilty.
13 Q Has the jury agreed upon a verdict as to Count
14 12?
15 A Yes.
16 Q What is the verdict?
17 A Guilty.
18 Q Has the jury agreed upon a verdict as to
19 Count 13?
20 A Yes.
21 Q What is it?
22 A Guilty.
23 Q Has the jury agreed upon a verdict as to Count
24 14?
25 A Yes.

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Q Has the jury agreed upon a verdict as to
Count 15?

A Yes.

Q What is the verdict?

A Guilty.

Q Has the jury agreed upon a verdict as to
Count 16?

A Yes.

Q What is the verdict?

A Guilty.

Q Has the jury agreed upon a verdict as to Count
17?

A Yes.

Q What is the verdict?

A Guilty.

Q Has the jury agreed upon a verdict as to
Count 18?

A Yes.

Q What is the verdict?

A Guilty.

Q Has the jury agreed upon a verdict as to Count
19?

A Yes.

Q What is the verdict?

1 qb-12

2 A Guilty.

3 Q Is the jury's verdict on Counts 1 through 19
4 unanimous?

5 A Yes.

6 Q Has the jury agreed unanimously upon a verdict
7 on any other count of the indictment?

8 A No.

9 THE COURT: Thank you.

10 You may be seated, Mr. Thweatt.

11 MR. BERNSTEIN: May I respectfully request
12 that you poll the jury, your Honor.

13 THE COURT: Yes, indeed.

14 (Jury duly polled, all answered in the
15 affirmative.)

16 THE COURT: The verdict of the jury as it
17 stands recorded, the jury finds the defendant guilty on
18 Counts 1 through 19, inclusive.

19 And so say you all.

20 I will see counsel at the side bar.

21 (At the side bar.)

22 MR. BERNSTEIN: Your Honor, as to the
23 balance of the counts which is 20 through 28, inclusive,
24 at this time the defendant Thweatt would move for a
25 mistrial on the remaining portion of the indictment.

D

May 19, 1972

Harvey Oostdyke
President
Hollow Organization, Inc.
215 West 92d Street
New York, New York 10025

Re: C-60372/Legal Proximity

Dear Mr. Oostdyke:

Enclosed is a copy of the fully executed grant award C-60372, between the City of New York and the New York State Office of Planning Services, the sub-contract between the City of New York and your agency, which you have received from Bert Hoff last week, has been registered with the City Comptroller. Please refer to this grant award number in future correspondence.

In the administration of the approved grant award, the following steps are to be taken: (a) all City regulations governing the expenditures of funds will be strictly adhered to; (b) the provisions of the New York State grant award (incorporated as a part of the sub-contract and attached thereto between your agency and the Criminal Justice Coordinating Council) will be complied with in all cases; (c) all correspondence concerning this grant shall be directed to the Criminal Justice Coordinating Council (this includes all monthly, quarterly reports, fiscal reports, and any other correspondence that affects the project); and (d) your contribution, be it cash or in-kind, shall be documented on a monthly basis and submitted to the Criminal Justice Coordinating Council. Periodic reviews shall be made by my staff as to compliance with the above requirements.

If you have any questions concerning the above, please contact me or my staff.

Sincerely,

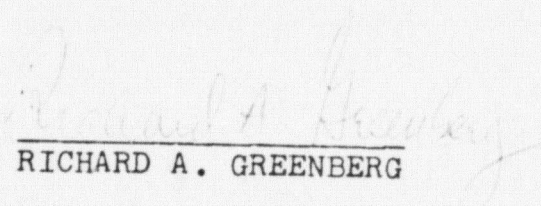
Henry S. Ruth, Jr.

HSR/ehg
Enclosures: 2

cc: B. Hoff
C-60372

CERTIFICATION OF SERVICE

Richard A. Greenberg, Esq., an attorney admitted to the bar of this Court, hereby certifies that he served the within Appellant's Appendix upon the United States Attorney for the Southern District of New York by personally delivering true copies of the same to his offices at 1 St. Andrew's Plaza, New York, New York, on February 10, 1978.


RICHARD A. GREENBERG

E

060572

GRANT AWARD

The New York State Office of Crime Control Planning (hereinafter called the "Office") hereby awards to New York City (hereinafter called the "Grantee") grant number _____ in an amount not to exceed \$ 71,272 shall end no later than December 14, 1972

This grant shall commence on March 15, 1972 and may be extended until _____ and shall be applied solely to the program or project described in Attachment A annexed hereto.

The Grantee shall administer the program or project, for which this grant is awarded, in accordance with the Conditions of the Grant hereinafter set forth. The Conditions of the Grant also shall govern the administration of and accountability for all funds granted hereunder and all funds or in-kind contributions required as the Grantee's contribution for the program or project.

CONDITIONS OF THE GRANT

1. Nature of the Grant. This grant is awarded under a Federally sponsored program pursuant to the Omnibus Crime Control and Safe Streets Act of 1968 (Public Law 90-351, 82 Stat. 177). Although the funds granted hereunder are furnished by the Federal "Law Enforcement Assistance Administration" (hereinafter called the "LEAA"), the award is a grant from the State of New York. LEAA funds are transmitted to the State as a grant to the State with a provision that a certain portion of the total granted for any fiscal year be made available by the State to units of local government or combination of such units.

2. Responsibilities of the State. The State has ultimate responsibility and is accountable to LEAA for proper administration of the funds granted by LEAA and for proper administration of the programs and projects financed with such funds. The State is also responsible for furnishing guidance and technical advice in connection with formulation and administration of such programs and projects.

3. Role of the Crime Control Planning Board and the Office of Crime Control Planning. The New York State Crime Control Planning Board (hereinafter called the "Board") and the Office have been designated by the Governor as the State planning agency to administer grants and programs for the State of New York under the Omnibus Crime Control and Safe Streets Act of 1968.

4. Reallocation of Grant. Due to the fact that the grant hereby awarded has been allocated from funds that are intended for use by the State and by all localities within the State, any portion of this award that is not actually required for use in the program or project described in Attachment A may, in the discretion of the Office, be withdrawn. In the event of any such withdrawal, the Office may use the amount so withdrawn for any other program or project of the Grantee or of any other unit of local government or of the State.

5. Grantee's Contribution. As its share of the program or project for which this grant is awarded, the Grantee shall provide from a source or sources other than this grant, or any Federal grant (except Federal grants awarded pursuant to the Demonstration Cities Act of 1966), an amount sufficient to finance at least 25

 percent of the total cost of the program or project (hereinafter called the "Grantee's contribution"). Such contribution shall be provided in the manner specified in Attachment A, and must be completed not later than See Appendix IV. In the event that the Grantee's contribution is not furnished as herein provided,

the amount of the grant award shall be reduced so that the amount of the program or project financed by the grant does not exceed 75 percent of the total cost of the program or project. The Grantee's contribution may consist of cash, appropriated funds, or contributions in-kind (i.e., goods, services, or facilities), or any combination thereof. In-kind contributions will be valued in accordance with Federal regulations. Said regulations specify, generally, that in-kind contributions must be evaluated at fair and current market prices for goods, services, or facilities of the type involved; that allocations of staff time be valued at regular salary and wage rates for the personnel involved; and that no allocation of staff time be recognized if it represents less than a twenty percent commitment of the personnel involved to the program or project concerned, unless the time of each such staff member is specified and documented.

6. Purchases. All purchases of furniture, fixtures, equipment, materials and supplies for the program or project described in Attachment A shall be made at the lowest possible price. In fixing the price or value to be allowed for any such purchase as an item to be financed in whole or in part with this grant award, or as an item to be included as all or part of the Grantee's contribution, the following principles shall apply:

- (a) Where the cost of any item to the Grantee is in excess of one hundred dollars, and the item can be obtained under an existing contract let by the New York State Commissioner of General Services containing an extension of prices clause which permits political subdivisions of the State to purchase thereunder, the price shall not exceed that which is specified in such contract.

- (b) Where no such contract has been let by the New York State Commissioner of General Services, if the cost of the item to the Grantee is in excess of one thousand dollars, the item (except for printed material) shall be purchased through the New York State Office of General Services. Any such purchase shall be in accordance with regulations established from time to time under section one hundred sixty-three of the State Finance Law and the Grantee shall accept full responsibility for payment due the vendor. Items not purchased in accordance with the provisions of this subparagraph shall be priced or valued at prices deemed reasonable and proper by the Office.
- (c) Printed material costing in excess of five hundred dollars shall be purchased through a sealed bidding procedure after soliciting a minimum of three bids. The contract award shall be made to the lowest responsible bidder whose commodity meets the Grantee's specifications. The Office reserves the right to fix the price or value of any printed material purchased by the Grantee where the provisions of this subparagraph have not been met.
- (d) No single piece of office furniture or equipment shall be priced at more than five hundred dollars without prior written approval of the Office.
- (e) Items not covered by subparagraphs (a) through (d) above shall be priced or valued at prices no higher than those that would be available through the Grantee's normal purchasing procedures.
- (f) Notwithstanding the provisions of subparagraphs (a) through (d), the Grantee may utilize its own normal purchasing procedures in lieu of the principles therein set forth for purchase of any item and such item shall be valued at the price paid by the Grantee, provided the Office specifically approves in writing the price of the item and the procedure for obtaining such price in advance of the purchase. Prices specified in Attachment A annexed hereto shall not be deemed to be prices specifically approved by the Office.
- (g) A single purchase of identical items, or multiple purchases of identical items within any sixty day period, shall be deemed to be a purchase of a single item.

7. Leases. All leases of space or equipment for the program or project described in Attachment A shall be made at the lowest possible prices.

In fixing the allowable price or value of the use of leased equipment the provisions of Paragraph Six above shall apply in so far as is practicable. To the extent that compliance with such provisions is not practicable, in leasing equipment, the Grantee may use its usual leasing procedures, provided, however, that the Office must specifically consent to the lease in writing if the price specified in the lease exceeds seventy-five dollars per month.

8. Personnel. Personnel costs shall not be allowable as costs to be financed in whole or in part with this grant award, or calculated as all or part of the Grantee's contribution, unless: (a) the position is classified in the competitive class of civil service; or (b) the Office has consented to (i) the position, (ii) the rate of pay for the position, and (iii) where the position is either a supervisory position or one that requires professional or other special skills, to the hiring of the individual who fills the position. Consent required for any position must be in writing. The positions specified in Attachment A annexed hereto shall not be deemed to be positions specifically consented to by the Office. The provisions of this paragraph shall not apply to payments to youth for participation in seminars, workshops, field trips and the like if not more than one hundred dollars is incurred as the cost of payment to any one youth during the period of this grant.

9. Travel, Meals and Lodging. Expenditures for travel, meals or lodging shall not exceed the normal amount permitted by the Grantee for such costs under rules applicable to the Grantee's official business. Where the Grantee has no rules applicable to expenditures for travel, meals or lodging, the expenditures shall not exceed the maximum promulgated by the State Comptroller (see New York State Codes, Rules and Regulations, Title 2, Ch. 1, Part 8).

10. Subcontracts. If any part of the program or project described in Attachment A is not administered directly by the Grantee, the Grantee shall enter into a written agreement for the administration thereof. Such agreement shall be submitted to the Office prior to the time it becomes binding upon the Grantee and no part of the expenditure necessary to fulfill the agreement shall be allowed as a cost to be financed by the grant award or shall be allowed as all or part of the Grantee's contribution unless the agreement is consented to in writing by the Office. The Office reserves the right to require changes in or additions to the agreement before consenting thereto. Any furniture, fixtures, equipment, materials or supplies (other than consumable supplies) to be purchased specifically for fulfillment of the agreement shall be purchased by the Grantee, unless otherwise approved in writing by this Office, and the Grantee, in any event, shall retain title thereto.

11. Reports. The Grantee shall submit to the Office, not later than See Attachment "A", a brief interim report which shall describe activities, progress, and accomplishments regarding the program or project for which the grant is awarded, through ~~See Attachment "A"~~. The Grantee shall also submit such other reports, and permit such on site inspections by representatives of LEAA or the Office, as may be requested by the Office at reasonable intervals.

12. Records and Documentation. The Grantee shall keep books and records which fully disclose the amount and disposition of the proceeds of this grant, the total cost of the program or project for which this grant is awarded and the amount and disposition of the Grantee's contribution. The procedures developed by the Grantee must provide for the accurate and timely recordation of the receipt of funds, expenditures, and unexpended balances. Adequate documentation of each transaction shall be maintained to permit determination, through an audit, of the accuracy of the records and allowability of expenditures charged to grant funds or calculated as the Grantee's contribution. If the allowability of an expenditure cannot be determined because records or documentation are inadequate, the questionable cost shall be disallowed.

13. Audit and Inspection. The grant related accounts and records of the Grantee shall be accessible to authorized

... the purposes of examination and audit. Any material required to be retained for
shall be retained for a period of six years from the date of termination or expiration of this
until the Grantee has been notified in writing by the Office that a final audit has been completed and all
questions arising therefrom have been resolved, whichever is sooner.

14. Allowable Costs. Any cost to be financed in whole or in part by this grant or to be included in whole or in part as the Grantee's contribution may be disallowed if it is not in compliance with principles and standards set forth by the Federal Bureau of the Budget in its Circular No. A-87, "Principles for Determining Costs Applicable to Grants and Contracts with State and Local Governments" (May 9, 1963).

15. Financial Reports. The Grantee shall submit quarterly and annual expenditure reports regarding the program or project in accordance with instructions to be furnished by the Office. Such reports shall fully itemize the disposition of the proceeds of this grant and expenditures made for the Grantee's contribution. Where amounts have been expended for personnel, the Grantee shall include the name and title of each person who has received payment, the amount of any such payment, the base salary, the days or hours of work for which such payment has been made and any amount owing but not yet paid. Any charge for fringe benefits must be specifically itemized. Where amounts have been expended for rent, the Grantee shall furnish the name of the person to whom paid, the name and address of the landlord, the monthly amount paid, the location of the premises for which the rent has been paid and the number of square feet rented. If space in a building owned or rented by the Grantee is allocated as a charge to the program or project, the report shall indicate the formula employed to determine the rental value of such space. Charges for utility and other services shall be itemized.

16. Grant Reductions. In the event that any cost to be financed in whole or in part by funds from this grant is disallowed, the Office may, in its sole discretion: (a) reduce the amount of the grant by the amount of the cost that is disallowed; or (b) apply the amount of the cost that is disallowed to some other cost of the program or project described in Attachment A. If any portion of the Grantee's contribution is disallowed, and the Grantee does not make an allowable compensating contribution which is at least equal to the amount disallowed, the amount of the grant shall be reduced so that the grant award does not exceed 75 percent of the total allowable cost of the program or project. Any reduction in the grant award may be reallocated by the Office in the manner described in Paragraph Four, above.

The amount of any reduction in the grant award shall, in the discretion of the Office, immediately be recoverable from the Grantee by the Office in the following cases: (a) if the grant award is reduced due to disallowance and the Grantee already has received grant funds pertaining to the disallowed cost; or (b) if the Grantee fails to make any portion of the required Grantee's contribution and the Grantee already has received grant funds pertaining to the item or period for which the Grantee was required to make the contribution.

17. **Project Income.** Any income, including interest arising from grant funds paid hereunder to the Grantee, which develops from the conduct of the program or project for which this grant was awarded shall inure to the benefit of the United States. At the end of the period during which grant funds may obligated, such income shall be paid over to the Office by check drawn to the order of the Office for transmittal to the United States.

18. **Copyrights.** If the program or project for which this grant is awarded should result in the production of original books, manuals, films, or other material for which a copyright may be granted, the Grantee may secure copyright protection for them. However, LEAA and the Office reserve, and the Grantee hereby gives them, an irrevocable, royalty-free, non-exclusive license to produce, reproduce, publish, translate or otherwise use such materials. This license includes the right to authorize others to publish and use any such materials.

19. **Patents.** If the Grantee, or a contractor of the Grantee, makes any discovery or invention in the course of or as a result of work performed on a program or project for which this grant is awarded, the Grantee shall refer the discovery or invention to the Office for transmittal to LEAA. LEAA shall determine whether or not patent protection shall be sought, how any rights therein, including patent rights, will be disposed of and administered, and whether any other action is necessary in order to protect the public interest in work supported with the Grant funds. LEAA shall make its determinations in accordance with the Presidential memorandum of October 9, 1963, on Government Patent Policy (28FR 10943).

20. **Payments of Funds to Grantee.** The Grantee shall file itemized advance quarterly estimates of its requirements for payment of the grant award. Such estimates shall also set forth an itemization of the Grantee's contribution for the quarter. Quarters begin January 1, April 1, July 1 and October 1. Estimates must be submitted by the first of the month preceding each quarter. The estimate for the first quarter or part quarter covered by this grant must be submitted within ten days from the date of acceptance of this grant.

The amount of the grant shall be advanced to the Grantee in at least monthly installments. Where all or any portion of the grant is to be used for purchase of furniture, fixtures, equipment, materials or supplies, payment of the portion of the grant to be so used shall be made during the month following the date of delivery of the item provided the item is reflected in the quarterly estimate report to be filed in advance by the Grantee.

Grant payments for furniture, fixtures, equipment, materials and supplies will not be made during the first quarter covered by this grant, unless the Grantee so requests and the Office has notified the Grantee that funds are available.

21. **Documentation for Payment.** In order to receive payment of any portion of this grant award, the Grantee shall comply with rules, regulations and procedures established by the Comptroller of the State of New York. No payment shall be made for furniture, fixtures, equipment, materials or supplies purchased or leased unless the Office has been furnished with a statement from the Grantee that the item or service has been received by the Grantee and with a copy of the supplier's invoice. No payment shall be made during any period of time in which the Grantee is in default in filing the financial report required by Paragraph Fifteen, above.

22. **Changes and Modifications.** Any change or modification in the program or project described in Attachment A, or the budget therefor, must be approved in writing by the Office.

23. **Termination or Curtailment.** If for any reason the Federal government terminates its grant to the Office or fails to pay over the full amount of the grant award it has made to the Office, the grant award herein made may be terminated or reduced in the discretion of the Office, provided, however, that no such reduction or termination shall apply to allowable costs already incurred by the Grantee where Federal grant funds are available to the Office for payment of such costs. The Office will, upon request, certify the availability of funds for items of equipment that cost more than five thousand dollars. No liability shall, in any event, be incurred by the Office by the State of New York under this grant award beyond monies available for the purposes thereof.

24. **Special Contract Provisions.**

(a) **Grand Jury Appearances.** In every contract let by the Grantee for the program or project described in Attachment A there shall be a requirement that the contractor agrees to the provisions of sections 103-a, 103-b, and 103-c of the General Municipal Law and such contract shall set forth in detail the consequences (enumerated in said sections) which result from the failure of a person to sign a waiver of immunity and testify when called before a grand jury or other agency to testify concerning any transaction or contract with the State, any of its political sub-divisions, any public authority or any department or agency of the State or of any of its subdivisions.

(b) **Anti-Discrimination.** In every contract let by the Grantee for the program or project described in Attachment A there shall be a provision that the contractor agrees to and will comply with the provisions of: (i) the New York State Civil Rights Law; (ii) sections 291 to 299 of the New York State Executive Law; and (iii) Title VI of the Federal Civil Rights Act of 1964 and regulations issued by the United States Department of Justice thereunder, all of which relate to discrimination.

25. **Effective Date.** This grant shall not take effect and shall not be binding upon the Office or the State of New York until the Grantee has received a copy of this document, signed by the Director or Deputy Director of the Office and approved by the Attorney General and the Comptroller of the State of New York.

Costs incurred or funds obligated by the Grantee prior to the time this grant takes effect shall not be allowable as charges against the grant award or as part of the Grantee's contribution unless approved in writing by the Office.

26. **Program Director and Financial Officer.** The Grantee's program director shall be responsible for the administration, implementation and operation of the program or project financed by the grant award. The Grantee's financial officer shall be responsible for receipt, accounting and disbursement of grant funds and for financial communications. Where financial responsibilities are divided, the financial officer shall nevertheless be the person deemed responsible to the Office regarding all fiscal matters. The financial officer should be someone other than the program director and preferably should be the Grantee's chief fiscal officer.

The Grantee hereby designates and authorizes the following person to act as the program director:

NAME: Mr. Harvey Costeyske
TITLE: President, Hollow Organization, Inc.
215 West 92nd Street
ADDRESS: New York, New York 10025
TELEPHONE NO.:

APPROVED AS TO FORM
LOUIS J. LEMOVITZ
APR 8 1972
ATTORNEY GENERAL
ASSISTANT

The Grantee hereby designates and authorizes the following person to act as the financial officer:

NAME: Mr. Rudy Clarence
TITLE: Fiscal Officer
Criminal Justice Coordinating Council
ADDRESS: 51 Chambers Street
New York, New York 10007
TELEPHONE NO.:

The designations herein made may be changed at any time by the Grantee, and the Office will recognize new designees upon receipt of written notice from the chief executive officer of the Grantee.

The New York City hereby signifies its acceptance of the above described grant award and the above stated conditions of the grant on the terms and conditions set forth or incorporated by reference in this document.

New York City

Grantee

By:

Name: Henry S. Ruth, Jr. Director
Title: Criminal Justice Coordinating Council
New York State Office of Planning Services
Division of Criminal Justice

By:

Name: Archibald R. Murray
Title: Administrator

3-23-72
Date

J. J. Leander
Date

A T T A C H M E N T "A"

The Grantee, the City of New York, will provide social services to eligible youths who appear in the youth part of the Criminal Court of New York City. The program will be implemented and operated by Hollow Organization, Inc., under a subcontract with the Grantee.

Program participation will be limited to youths residing in the 20 block area surrounding Benjamin Franklin High School, roughly from East 110th Street to East 126th Street and from Second Avenue to the East River Drive. Youths will not be eligible unless arraigned in the youth part upon a misdemeanor charge in the Criminal Court, New York County, and assigned The Legal Aid Society because of indigency.

The project duration will be 18 months. During the first months of the project the implementing agency will lease facilities within the geographic area described above, will initiate the alteration and renovation of these facilities, purchase or rent the equipment described in the project budget,

and conduct any negotiations necessary to project operation.

The project itself will consist of a center director and four full-time streetworkers. The center director will perform administrative and supervisory tasks, insure that necessary records are maintained with all reports and make initial arrangements for the provision of services to youths. If time permits, he may maintain a limited caseload. The staff will be assigned to the project office.

The streetworkers will continue to counsel and provide social services to any youths who they already service. No additional youths will be added to their caseloads except through the processes described below. Fifteen youths will be added to the program in the first month and 30 in each of the next three months, to a maximum of 120 youths for the project staff. Thereafter, selection will occur to fill vacancies.

The Grantee will arrange a schedule so that at least one streetworker will appear in the youth part on at least one day per week if there are program vacancies. When an eligible youth is to be arraigned, the streetworker will interview the youth, explain the program to him, determine if the youth would be appropriate for the program, and, if so, ask the youth if he wishes to participate. If the youth will participate, he will be accepted into the program if eligible.

If arrangements are made with the Police Department to have a Youth Services Officer assigned to the project, the initial selection of participants will be done by that officer in the precinct. An investigation into the background of the youth, either by the streetworkers or by the officer, will be done to verify the information the youth provided.

Once the youth is accepted into the program, he will be assigned to one of the streetworkers. Each streetworker will have a caseload no larger than 45 youths.

The streetworker will provide general counseling, remind him of court appearance, accompany the youth on all appearances, refer the youth to any agencies which have programs which might service the youth's needs, and follow-up on such referrals.

Agencies include St. Lukes Hospital (Narco II drug program), Manpower and Career Development Agency, Community Development Agency, New York State Employment Service, New York City Board of Education, the New York City Department of Probation, street academics and the like. Throughout the duration of the project, the project staff will work to integrate the services offered by private, state, and city agencies which address the needs of youth.

The youths will remain in the program until the conclusion of the criminal proceedings and beyond that time, if the streetworkers feel that further assistance is necessary. A youth will be considered as a participant if he is jailed and the streetworker

continues to counsel him. A youth will not be considered as a participant if he requires no services beyond occasional counseling.

The streetworkers will consult with the youth's attorneys in the youth part before taking any action in relation to a criminal case. If the attorney approves, the streetworker may investigate the background of the case, assemble facts, find character witnesses or otherwise assist the attorney and the youth. The streetworkers will inform the attorney, upon request, of the youth's progress during the entire time the youth is before the court, including periods during which the case is adjourned in contemplation of dismissal, sentence has been deferred, or while the youth is on probation.

The Grantee will submit regular reports to the Division and to the Criminal Justice Coordinating Council. Brief monthly reports, to be submitted on the 15th of each month during the duration of the project, will include the following information for the proceeding calendar month:

1. Youths services (male, female, age, nature of offense, in jail, with a breakdown by month of joining program);

2. Number of youths in project participating in street academics, with a separate reference to the number of youths attending such academics who joined this project and no longer receive counseling;

3. Number, nature and extent of referrals to private, state and city agencies, with information on follow-up results;

4. Client response to such referrals;

5. Any planning or implementation steps taken to integrate the services provided by private, state or city agencies with the program;

6. Any court-related steps taken by a streetworker in regard to the criminal case pending against a youth, i.e., investigation, finding witnesses, etc.,

7. Disposition on youth cases, specifically adjournment in contemplation of dismissal, deferred sentence, probation, conditional or unconditional discharge, etc.; and

8. Any problems encountered in project operations during the month, including those related to acquiring and renovating facilities.

During the first three months, the reports will also comment on the "pick-up" system for clients in arraignment part.

Every fourth report will summarize the information required above for the entirety of the project to the end of the preceding month. It will also include a narrative description of program operations and the youth-streetworker-attorney relationships developed. Each quarterly report will also discuss the participation of other agencies in serving the needs of youth. Attached to each such report will be copies of the material submitted to the evaluator during the preceding quarter.

The program will be evaluated by a funded project, New

York City Diversion Evaluation (C-55464). The project staff will gather and record all data necessary for this evaluation and cooperate with the staff of the Diversion Evaluation project.

In the event that an additional evaluation is required, the project staff and Hollow Organization will cooperate fully with the evaluator.

The Grantee will expend a total of \$134,747 for implementation of this project. Federal funds will be \$71,272. The Grantee's contribution will be \$63,375. The following appendices to this Attachment "A" are hereby incorporated by reference:

Appendix I - Project Budget

Appendix II - Further Terms and Conditions.

New York State Office of Planning Services
Division of Criminal Justice

Appendix I
DCJ No. 327A

PROJECT BUDGET

Project Duration 18 (mos.)
- March 15, 1972 to September 14, 1972

[illegible]

A. Personnel

[illegible]

BUDGET ITEMS	FEDERAL FUNDS	MATCHING FUNDS		CATEGORY TOTAL
		IN-KIND	CASH	

Equipment

four desks	600			
four chairs	300			
two typewriters @ \$32/mo. rental for				
8 mos.	1,152			
misc. equipment for office	540			
Sub-Totals	2,592			2,592

Supplies

office supplies	525			
Sub-Totals	525			525

Travel and Subsistence

Local travel, public transportation			
11¢/mi. by automobile	750		
Sub-Totals	750		750

Rental of Facilities

Project office, not to exceed \$5.00/			
sq. ft.	9,000		
Sub-Totals	9,000		9,000

BUDGET ITEMS	FEDERAL FUNDS	MATCHING FUNDS		CASH
		IN-KIND	CASH	

H Alterations and Renovations

1. Renovation*	4,000			
Sub-Totals	4,000			4,000

I. All Other Expenses

1. Telephone at \$150/mo.	2,700			
2. Utilities	180			
3. Postage	225			
4. Copying	300			
Sub-Totals	3,405			3,405

BUDGET SUMMARY:

FEDERAL FUNDS	TOTAL MATCHING FUNDS	TOTAL PROJECT COST
\$ 71,272	\$ 63,375	\$ 134,747
55 %	47 %	100%

* subject to LEAA approval

New York State Office of Planning Services
Division of Criminal Justice

Appendix II

FURTHER TERMS AND CONDITIONS

1. Federal and Matching Funds included in the Project Budget (Appendix I) are budgeted for a period of 18 months. Except as provided in Paragraph 2, below, Federal Funds shall not be applied against costs incurred after September 14, 1973 and all Matching Funds shall have been provided by such date.
2. To the extent that a surplus of Federal Funds awarded hereunder exists as of September 14, 1973, the Grantee may apply such to continued project operations until December 14, 1973, provided that the Grantee has submitted to the Division of Criminal Justice, and the Division has approved, a detailed budget for the expenditure of such remaining Federal Funds during such extended period. The detailed budget shall also provide

for the contribution of any remaining Matching Funds during such extended period and shall be accompanied by a statement specifying the reasons for continued operations and the work to be performed during the extended period. Such detailed budget may be part of the projected expenditures portion of the Grantee's Restated Project Budget (see Paragraph 3, below).

3. The Grantee shall submit a Restated Project Budget to the Division on December 15, 1972. Such Restated Project Budget shall be on a form approved by the Division and shall set forth actual expenditures of Federal and Matching Funds through November 30, 1972, together with a projection of expenditures for the balance of the project.

4. If the Grantee fails to comply with any of the terms or conditions of this grant award to be performed on its part, the Division may terminate the grant award and/or withhold payment on any vouchers until the Division is reasonably assured that the Grantee is satisfactorily performing all its obligations hereunder.
5. The Division may withhold payment of up to ten percent (10%) of the total Federal Funds granted hereunder until the final report concerning the project has been received and approved by the Division. The final report shall be reviewed to determine whether the obligations of the Grantee hereunder have been met satisfactorily.
6. On or before April 1, 1977, the Grantee will submit to the Division a proposed subcontract with Hollow Organization, Inc. for review and

approval under Paragraph 10 of the Grant Award Agreement. The subcontract will include a budget with a detailed breakdown of the subcontractor's estimated costs, including direct costs, an indirect cost rate (based on wages and salaries) and a profit allowance, if applicable, stated in terms of a percentage of direct and indirect costs. If the subcontractor is currently working under an indirect cost rate approved by another governmental agency, evidence of such approval should be attached to the subcontract. Specific direct cost items of the subcontractor must be substantiated to the Division at the time the Grantee submits vouchers for payment thereon.

F

#4

OFFICE
8-1/72

FINANCIAL REPORT SUMMARY

Federal
Funds

OBJECT: Legal Proximity Program
 NAME: Hollow Organization, Inc.
 ADDRESS: 1686 Madison Ave.
NYC. 10037

REPORT NO.

EXPENSES FOR PERIOD August + September 1972

	Expenses For This Month (2)	Previous Expenses	Total Expen- ses to Date	Approved Budget	Balance Available
A. ^(Aug + Sept) GROSS SALARIES	5,666 ⁶⁸	8,499.60	14,166 ²⁸	51,000	36,833 ⁷²
B. FRINGE BENEFITS					
C. CONSULTANT SERVICE					
D. EQUIPMENT	—	—	—	2,592.00	2,592 ⁰⁰

E. SUPPLIES	30.13	407.72	437.25	525.00	87.15
F. TRAVEL	KIC 6	6.00	12.40	180.00	737.60
G. RENTAL OF (Supt.) FACILITIES	650	975.00	1,625.00	9,000.00	7,375.00
H. ALTERATION AND RENOVATION	—	—	—	4,000	4,000.00
I. ALL OTHER EXPENSES	10.20	455.30	465.50	3,405	2,735.40
TOTAL	6,363.47	10,343.62	16,707.05	71,272	54,544.91

AGENCY CERTIFICATION

I certify, to the best of my knowledge and belief, that the expenses for which reimbursement of payment is requested in the amount of \$6,363.47 for project C- 60272, approved by Criminal Justice Coordinating Council were made in accordance with the rules and regulations of Criminal Justice Coordinating Council, and that the articles or services listed hereon were necessary for and are to be used solely for the purpose specified in the contract for this project.

9/29/72
Date

Director
Title

James C. Thweatt
Signature

Hollow Organization, Inc.
1686 Madison Ave.
NYC

PERSONNEL SUMMARY

CONTRACT NO. C-60372

NAME OF PROGRAM

Legal Propinquity Program

PERIOD FROM

August + September 1972

REPORT

4

Social Security No.	Employee Last Name	Employee First Name	Title in Contract Budget	Base Salary	P E R	Total Hours Worked	Gross Pay	Check Number	Others
(Aug) 223-56-7332	Thweatt	JAMES	Director	18,000	yr.	140% 1,500	1,500	1501-#150 3001-#164	
(Sept) 223-56-7332	Thweatt	JAMES	"	18,000	yr.	140% 1,500	1,500	1501-#172 3001-#186	
(Aug) 090-34-8717	Rivera	Wilfredo	Streetworker	8,500	yr.	140% 708 34	708 34	1501-#154 3001-#167	
(Sept) 090-34-8717	Rivera	Wilfredo	"	8,500	yr.	140% 708 34	708 34	1501-#176 3001-#177	
(Aug) 129-34-3835	MAYNARD	Edward	Secretary	7,500	yr.	140% 625 00	625 00	1501-#156 3001-#169	
(Sept) 129-34-3835	MAYNARD	Edward	"	7,500	yr.	140% 625 00	625 00	1501-#177 3001-#198	
							5,666.68		

Carol Horry
Prepared by:

9/29/72
Date

TOTAL:

5,666.68

Checked by:

James C. Thweatt

Approved by:

James C. Thweatt

TEAM PERSONNEL - BREAK DOWN

NAME OF PROJECT Hollow Org. Inc - Legal Provingunity

PERIOD FROM August & September 1972

GRANT NO. C- 60372 REPORT NO. 4

D. EQUIPMENT

1. Four Desks
2. For Chairs
3. 2 Typewriter rental
4. Misc. Equipment for Office

TOTAL EQUIPMENT

E. SUPPLIES

1. Office Supplies

TOTAL SUPPLIES 30.13 ✓

F. TRAVEL & SUBSISTENCES

1. Local Travel & Auto Expense

TOTAL TRAVEL 6.40 ✓

G. RENTAL OF FACILITIES

1. Project Off.

TOTAL RENTAL OF FACILITIES 650

H. ALTERATION & RENOVATION

1. Renovation

TOTAL RENOVATION

I. ALL OTHER EXPENSES

- 1. Telephone
- 2. Utilities
- ✓ 3. Postage
- 4. Copying

(Postage)

TOTAL OTHER EXPENSES 10.26

TOTAL O.T.P.S. \$ 696.79

TOTAL PERSONNEL 5,666.68

TOTAL FEDERAL \$ 6,363.47

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- x
UNITED STATES OF AMERICA,

-v-

JAMES C. THWEATT,

Defendant.
----- x

77 CRIM. 0553

INDICTMENT

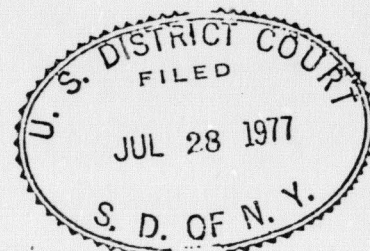
77 Cr.

INTRODUCTION

The Grand Jury charges:

A. The Statutory and Regulatory Framework

1. In enacting Title 42, United States Code, Section 3701 et seq., Title I of the Omnibus Crime Control and Safe Streets Act of 1968, (hereinafter the "Law Enforcement Assistance Administration Act" or "LEAA Act"), Congress created the Law Enforcement Assistance Administration of the United States Department of Justice, (hereinafter "LEAA"), to help coordinate a cooperative effort among the federal Government, the various states, and localities to combat crime.



2. LEAA was authorized to make monetary grants to help fund law enforcement related programs, including programs to organize and train community service officers, to encourage neighborhood participation in crime prevention and public safety efforts, and to develop and operate community based delinquency prevention and correction programs.

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3. Pursuant to the LEAA Act, LEAA awards these monetary grants to states, which have comprehensive state plans. The New York State Office of Planning Services, Division of Criminal Justice Services, (hereinafter "DCJS"), coordinates the New York State LEAA program and serves as a link between LEAA and localities such as New York City.

4. In New York City, the Criminal Justice Coordinating Council, (hereinafter "CJCC"), administers and supervises the LEAA grants and serves as a link between DCJS and private local groups which actually implement the programs. These private local groups known as "contractors" or "subgrantees", submit applications to be reviewed for approval by CJCC. When CJCC acts favorably upon an application, the application is then reviewed for approval by DCJS.

5. LEAA awards federal funds to the state. The state in turn reimburses localities such as New York City, which in turn have awarded monies to the contractors.

6. Match funds are funds derived from non-federal sources, which the contractor or subgrantee is required to apply to the program.

7. In New York City, the contractor submits monthly budget reports to the CJCC detailing both federal and match fund expenditures. These monthly reports include documentation in the form of cancelled checks or receipts to support the claimed expenditures.

8. The contractor's monthly budget and expense reports are also transmitted to DCJS.

9. DCJS collects information pertaining to various grants and subgrants, and incorporates this information into reports submitted to LEAA.

B. The Parties

10. At most times relevant to the Indictment, the Hollow Organization, (hereinafter "Hollow"), was a corporation organized pursuant to the New York State Membership Corporation Law. Hollow was a contractor or subgrantee as described in paragraph 4.

11. At most times relevant to the Indictment, Streetworkers, Inc., (hereinafter "Streetworkers"), was a corporation organized pursuant to the New York State Not-For-Profit Corporation Law. Streetworkers was a contractor or subgrantee as described in paragraph 4.

12. At most times relevant to the Indictment, JAMES C. THWEATT, the defendant, was Director of the "Legal Propinquity" or "Legal Pro" Program, which is described in paragraph 15 below and was Vice-President and Treasurer of Streetworkers, Inc.

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13. At most times relevant to the Indictment, One-Twenty-One Management (hereinafter "One-Twenty-One" or "121") was an entity purportedly created to acquire and manage real estate. In and about April, 1973, One-Twenty-One Management was incorporated pursuant to the New York State Business Corporation Law.

14. At most times relevant to the Indictment, the alleged principal and chief operating officer of One-Twenty-One Management was Iris T. Rucker, a/k/a Iris Elaine Rucker Daugherty, a/k/a Iris Elaine Thweatt Rucker Daugherty. Iris Rucker is the sister of JAMES C. THWEATT, the defendant.

C. The Grant Award - Legal Propinquity Program

15. In the latter half of 1971, the Hollow Organization submitted a proposal to CJCC for federal financing of the Legal Propinquity Program. The Legal Propinquity Program, which was also known as the Streetworkers Program, provided youths arrested for relatively minor crimes with counselling and advice from individuals known as "street-workers."

16. On or about February 29, 1972, the defendant, JAMES C. THWEATT, as Director of the Legal Propinquity Program, approved the terms of a proposed agreement between DCJS and CJCC covering the Legal Propinquity Program.

17. In and around March, 1972, the New York State Office of Crime Control Planning, DCJS, entered into a Grant Award with New York City and CJCC, whereby \$71,272 of federal funds from LEAA and \$63,375 of match funds would be applied to the Legal Propinquity Program, which initially was to be implemented by Hollow under a subcontract with CJCC. The Grant Award was attached and made part of the contract between Hollow and CJCC.

18. In or around July, 1972, Streetworkers was incorporated and took over the implementation of the Legal Propinquity Program. Defendant THWEATT continued as the Program Director.

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19. In and around August, 1973, defendant THWEATT, on behalf of the Legal Propinquity Program, applied for and requested an increase of federal funds of approximately \$15,338 for a total of \$86,610 of federal funds and an increase of match funds in the approximate amount of \$10,562 for total match funds of \$73,937. In and around September, 1973, the aforesaid application and request was approved.

20. In and around March, 1974, an additional extension and increase of \$40,706 of federal funds was authorized for the Legal Propinquity Program.

21. Beginning in and around June, 1973, and over the course of the next twelve months, Streetworkers and defendant THWEATT submitted applications for long term refunding, which applications requested additional federal funds in excess of \$180,000 for the Legal Propinquity Program.

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COUNTS ONE THROUGH NINETEEN

The Grand Jury further charges:

22. On or about the dates set forth below in Counts One through Nineteen of this Indictment, in the Southern District of New York, the defendant JAMES C. THWEATT, unlawfully, knowingly and wilfully did, and did cause others to falsify, conceal and cover up by trick, scheme and device, material facts, and did knowingly and wilfully make and cause others to make false, fictitious and fraudulent statements and representations and did make and use and cause others to make and use false writings and documents, knowing the same to contain false, fictitious and fraudulent statements and entries in a matter within the jurisdiction of a department and agency of the United States, to wit, the Law Enforcement Assistance Administration of the United States Department of Justice, in that the defendant THWEATT submitted and caused others to submit false and fictitious Monthly Reports for the Legal Propinquity Program, in that the rental payments for the Legal Propinquity storefront were falsely overstated and falsely documented.

23. The false statements and false documents concerning the rent for the Legal Pro storefront at 1686 Madison Avenue were part and pattern of the following scheme:

(a) Defendant THWEATT, reported and caused to be reported rent for the Legal Pro storefront greatly in excess of the true rent. On Reports dated in and around August, 1972 through August, 1973, which covered the period May, 1972 through July, 1973, defendant THWEATT reported and caused to be reported to the authorities rent of \$325 per month for the premises located at 1686 Madison Avenue, whereas in fact as defendant THWEATT then and there well knew the actual rent was \$125 per month and the true owner of the premises only received rental payments for May, 1972 through August, 1972 for a total of \$500. Beginning with Reports dated in and around September, 1973 through February, 1974, which covered the period August, 1973 through January, 1974, defendant THWEATT reported and caused to be reported to the authorities rent of \$800 per month for the Legal Pro storefront whereas the true owner of the aforesaid premises neither received nor would receive any rental payments at all during this period;

(b) In order to document and justify the aforementioned falsely reported rental payments, in and around the summer of 1972, defendant THWEATT falsely represented to CJCC that Streetworkers had been hired by the owner of 1686 Madison Avenue to serve as the building's manager. Accordingly, for the period covering May, 1972 through October, 1972, defendant THWEATT would and did transfer and cause to be transferred a series of checks at a rate of \$325 per month, drawn on a Hollow bank account and made payable to Streetworkers, which checks, defendant THWEATT submitted and caused to be submitted, as part of the Monthly Reports, as false documentation that rent of \$325 per month had been paid;

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(c) For the period following October, 1972, defendant THWEATT would and did falsely advise and would and did cause others to advise CJCC falsely, that One-Twenty-One and Iris Rucker had been hired by the true owner of 1686 Madison Avenue, to manage the property when, in fact, defendant THWEATT then and there well knew that One-Twenty-One and Iris Rucker had not been so hired by the owner of the building. Accordingly, in Reports dated from approximately December, 1972 through August, 1973, defendant THWEATT included and caused to be included in the Monthly Reports, false, fictitious and fraudulent receipts dated from November, 1972 through August, 1973, prepared and caused to be prepared by defendant THWEATT, which purported to document that One-Twenty-One, Iris Rucker, and other purported officials of One-Twenty-One had received \$325 per month rent for the Legal Pro storefront. In an effort to document the claimed increase of rent to \$800 per month, in Monthly Reports dated

from in and around September, 1973 through in or around February, 1974, defendant THWEATT included and caused to be included a series of false, fictitious and fraudulent rent receipts dated from August, 1973 through February, 1974, prepared and caused to be prepared by defendant THWEATT, which receipts purported to evidence that One-Twenty-One, Iris Rucker and other purported officials of One-Twenty-One had been paid \$800 monthly rental for the Legal Pro storefront whereas defendant THWEATT then and there well knew, at no time did One-Twenty-One manage the aforesaid property.

24. Among the reasons that defendant THWEATT made the aforementioned false statements and submitted the false documentation for the statements, was to conceal the fact that at no time were the payments of funds to One-Twenty-One used to pay the true rent, rather monies were filtered through a One-Twenty-One bank account and deposited into

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personal bank accounts of defendant THWEATT. In fact, defendant THWEATT, would and did use One-Twenty-One Management Company to launder approximately \$22,275 in Streetworkers funds, including approximately \$8000 of federal monies which were deposited into his personal bank accounts.

25. The false statements made in, and the false documents submitted with the Monthly Reports, prepared by or caused to be prepared by the defendant, JAMES C. THWEATT, in order to conceal and cover up the misappropriation of the rent on the Legal Pro storefront, are hereinafter set forth in Counts 1-19:

<u>Count</u>	<u>Report No.</u>	<u>Approximate Date of Federal Report</u>	<u>Period Covered In Report</u>	<u>False Statement and False Documentation</u>
1	2	August 2, 1972	June, 1972	a) \$650 rental expense for May, June b) Hollow check No. 114 to Streetworkers
2	3	August 2, 1972	July, 1972	a) \$325 rental expense for July b) Hollow check No. 118 to Streetworkers

3	4	September 29, 1972	August and September, 1972	a) \$650 rental expense for August and September b) Hollow checks Nos. 136 and 182 to Streetworkers
4	5	October 31, 1972	October, 1972	a) \$650 rental expense for 2 months b) Hollow check No. 199 to Streetworkers
5	6	November 30, 1972	November, 1972	a) \$325 rental expense
6	7	December 31, 1972	December, 1972	a) \$325 rental expense b) Rent receipts Nos. 111 and 121, One-Twenty-One Management to Hollow

<u>Count</u>	<u>Report No.</u>	<u>Approximate Date of Federal Report</u>	<u>Period Covered In Report</u>	<u>False Statement and False Documentation</u>
7	8	February 1, 1973	January, 1973	a) \$325 rental expense b) Rent receipt No. 157 to Hollow
8	9	March 1, 1973	February, 1973	a) \$325 rental expense b) Rent receipt No. 142, 121 Management to Hollow
9	10	April 1, 1973	March, 1973	a) \$325 rental expense b) Rent receipt No. 210, 121 Management to Hollow
10	11	May 8, 1973	April, 1973	a) \$325 rental expense b) Rent receipt from One-Twenty-One Management to Hollow
11	12	June 11, 1973	May, 1973	a) \$325 rental expense b) Rent receipt No. 225 from Alvin Bragg to Street-workers

12	13	July 10, 1973	June, 1973	a) \$325 rental expense b) Rent receipt No. 235 from Walter Watson to Street- workers
13	14	August 6, 1973	July, 1973	a) \$325 rental expense b) Rent receipt No. 240 from Iris Rucker to Street- workers
14	15	September 7, 1973	August, 1973	a) \$800 rental expense b) Rent receipt No. 245 from Iris Rucker to Street- workers
15	16	October 4, 1973	September, 1973	a) \$800 rental expense b) Rent receipt No. 246 from 121 Manage- ment to Streetworkers
16	17	December 4, 1973	October, 1973	a) \$800 rental expense b) Rent receipt No. 254 from Iris Rucker to Street- workers

<u>Count</u>	<u>Report No.</u>	<u>Approximate Date of Federal Report</u>	<u>Period Covered In Report</u>	<u>False Statement and False Documentation</u>
17	18	December 4, 1973	November, 1973	a) \$800 rental expense b) Rent receipt No. 259 from Iris Rucker to Street-workers
18	19	January 14, 1974	December, 1973	a) \$800 rental expense b) Rent receipt No. 265 from Iris Rucker to Street-workers
19	20	February 12, 1974	January, 1974	a) \$800 rental expense b) Rent receipt No. 272 from Iris Rucker to Street-workers

(Title 18, United States Code, Sections 1001 and 2.)

COUNTS TWENTY THROUGH THIRTY-SIX

The Grand Jury further charges:

26. On or about the dates set forth below in Counts Twenty through Thirty-six of this Indictment, in the Southern District of New York, the defendant JAMES C. THWEATT, unlawfully, knowingly and wilfully did, and did cause others to falsify, conceal and cover up by trick, scheme and device, material facts, and did knowingly and wilfully make and cause others to make false, fictitious and fraudulent statements and representations and did make and use and cause others to make and use false writings and documents, knowing the same to contain false, fictitious and fraudulent statements and entries in a matter within the jurisdiction of a department and agency of the United States, to wit, the Law Enforcement Assistance Administration of the United States Department of Justice, in that the defendant submitted and caused others to submit false and fictitious Monthly Reports for the Legal Propinquity Program, which concealed, and covered up the diversion of Streetworkers' funds, for various improper and unauthorized uses.

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27. Among the expenditures which were concealed and covered up in the Monthly Reports, was the receipt by defendant THWEATT of Streetworkers' money and property totalling in excess of \$50,000, consisting of the following items, among others:

(a) The purchase on or about November 30, 1972, of a Mercedes Benz automobile, for approximately \$13,500, which automobile was registered to Streetworkers, but which was purchased for the personal use of defendant THWEATT;

(b) The payment of three months rent totalling \$600 on defendant THWEATT's own apartment.

28. In addition to the expenditures described in paragraph 27, the following improper and unauthorized expenditures, among others, were concealed and covered up in the Monthly Reports:

(a) The purchase in April, 1973 of a second Mercedes Benz for approximately \$11,000, which automobile was purchased for and registered to another Officer and Director of Streetworkers;

(b) The payment of seven months rent totalling approximately \$1400 on the apartment of David Thweatt, the brother of defendant JAMES C. THWEATT.

29. The expenditures which the defendant JAMES C. THWEATT concealed, or caused to be concealed in the Monthly Reports are hereinafter set forth in Counts 20-36:

<u>Count</u>	<u>Report No.</u>	<u>Approximate Date of Report</u>	<u>Period Covered In Report</u>	<u>Concealed and Omitted Item</u>
20	3	August 2, 1972	July, 1972	a) Concealment of \$150 payment to defendant THWEATT
21	4	September 29, 1972	August, September, 1972	a) Concealment of \$300 payment to defendant THWEATT
22	6	November 30, 1972	November, 1972	a) Concealment of \$540 check for Mercedes Benz
23	7	December 31, 1972	December, 1972	a) Concealment of \$13,000 expenditure for Mercedes Benz b) Concealment of payment of approximately \$600 rent for defendant THWEATT's apartment

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<u>Count</u>	<u>Report No.</u>	<u>Approximate Date of Report</u>	<u>Period Covered In Report</u>	<u>Concealed and Omitted Item</u>
				c) Concealment of \$590 payment to defendant THWEATT
24	8	February 1, 1973	January, 1973	a) Concealment of approximately \$600 expenditure to pay for 3 months rental for David Thweatt's apartment b) Concealment of \$400 payment to defendant THWEATT
25	9	March 1, 1973	February, 1973	a) Concealment of approximately \$2200 made payable to defendant THWEATT for travel expenses b) Concealment of \$80.2 payment to defendant THWEATT
26	10	April 1, 1973	March, 1973	a) Concealment of approximately \$1000 payable to defendant THWEATT for travel expenses b) Concealment of \$380 payment to defendant THWEATT

27	11	May 8, 1973	April, 1973	a) Concealment of about \$10,700 expenditures on Mercedes Benz b) Concealment of approximately \$600 used to pay 3 months rent for David Thweatt's apartment c) Concealment of \$1,123.31 payment to defendant THWEATT
28	12	June 11, 1973	May, 1973	a) Concealment of about \$200 used to pay rent for David Thweatt's apartment b) Concealment of \$1450 payment to defendant THWEATT
29	13	July 10, 1973	June, 1973	a) Concealment of \$1000 payment to defendant THWEATT

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<u>Count</u>	<u>Report No.</u>	<u>Approximate Date of Report</u>	<u>Period Covered In Report</u>	<u>Concealed and Omitted Item</u>
30	14	August 6, 1973	July, 1973	a) Concealment of \$700 payment to defendant THWEATT
31	15	September 7, 1973	August, 1973	a) Concealment of \$800 payment to defendant THWEATT
32	16	October 4, 1973	September, 1973	a) Concealment of \$300 payment to defendant THWEATT
33	17	December 4, 1973	October, 1973	a) Concealment of \$600 payment to defendant THWEATT
34	18	December 4, 1973	November, 1973	a) Concealment of \$800 payment to defendant THWEATT
35	19	January 14, 1974	December, 1973	a) Concealment of payment of approximately \$600 rent for defendant THWEATT's apartment b) Concealment of \$2600 payment to defendant THWEATT
36	20	February 12, 1974	January, 1974	a) Concealment of \$4000 check payable to defendant THWEATT for travel expenses b) Concealment of \$2,29 payment to defendant THWEATT

COUNT THIRTY-SEVEN

The Grand Jury further charges:

30. From in and around July 30 1972 up to and including in and around February, 1974, in the Southern District of New York, the defendant, JAMES C. THWEATT, unlawfully, willfully and knowingly did embezzle, steal, purloin and knowingly convert to his use and to the use of another, and without authority did sell, convey and disburse monies and things of value of the United States, and property made and being made under contract for the United States and the Law Enforcement Assistance Administration of the United States Department of Justice, with a value in excess of \$100, namely, rental payments which were allocated for the Legal Propinquity Program in the approximate amount of \$8,800.

31. The allegations contained in paragraphs 22-25 of this Indictment are repeated and realleged as though fully set forth herein as constituting and describing in part the scheme by which defendant THWEATT committed the offense charged in this Count.

(Title 18, United States Code, Sections 641 and 2.)

COUNT THIRTY-EIGHT

The Grand Jury further charges:

32. From in and around August, 1972 up to and including in and around February, 1974, in the Southern District of New York, the defendant, JAMES C. THWEATT, unlawfully, wilfully and knowingly did embezzle, steal, purloin and knowingly convert to his use and the use of another, and without authority did sell, convey and disburse monies and things of value of the United States, and property made and being made under contract for the United States and the Law Enforcement Assistance Administration of the United States Department of Justice, with a value in excess of \$100, namely Streetworkers' money and property.

33. The allegations contained in Paragraphs 26-29 of this Indictment are repeated and realleged as though fully set forth herein as constituting and describing in part the scheme by which defendant THWEATT committed the offense charged in this Count.

(Title 18, United States Code, Sections 641 and 2.)

Joseph J. McManis
FOREMAN

Robert B. Fiske, Jr.
ROBERT B. FISKE, JR.
United States Attorney

October 19, 1977 Trial Cont; Jury deliberation; Jury sequestered.

October 20, 1977 Trial Cont; Jury deliberation; Jury verdict (partial verdict); GUILTY ON COUNTS 1-19; Acft's motion for mistrial on counts 20-38 granted.

BAIL PENDING APPEAR: \$15,000 P.R.B. secured by \$1,000 cash.

Travel limits: Continental U.S.A. (48 mainland states)

Condition: If deft. away from home more than three nights he will notify his counsel.

Deft. given until October 25-77 by 5:00pm to post bail; R.O.R. until bail is posted.

SENTENCE DATE: November 22, 1977 at 9:30 am in Courtroom 601. P.S.I. ordered.

Ward J.
P.O.

November 22, 1977

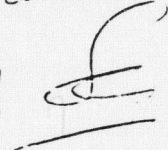
Def't present w/ Counsel for sentencing.

Def't. is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of two (2) years on Count 1 and two (2) years each on Counts 2-19. Counts 2-19 are to run concurrently with Count 1.

Def't. shall become eligible for parole, under 18, U.S. Code, Sect. 4205(b)(2), at such time as the Parole Commission may determine.

Def't. is released on bail pending appeal. Ward J. 

November 22, 1977

Def't's bail pending appeal is modified as follows: \$30,000 PRB secured by the same \$1,000 cash previously posted. Bond to be co-signed by Def't's wife. Def't's bail limits are the Continental U.S.A. If the def't. is away from home more than one night he will notify his counsel of his location, address & telephone number. His Counsel will immediately notify the Dist. V.S. Attorney of this fact. Ward J. 

September 21, 1977

September 28, 1977 - Trial Continued.

September 29, 1977 - Trial Continued.

A September 30, 1977 - Trial Continued. *SE*

October 3, 1977 - Trial Continued.

October 4, 1977 - Trial Continued.

October 5, 1977 - Trial Continued.

October 6, 1977 - Trial Continued.

October 7, 1977 - Trial Continued.

October 10, 1977 - Trial Continued.

October 11, 1977 - Trial Continued; Deft's oral motion to dismiss
Counts 1-37 denied, and decision reserved as to
Count 38. Ward J. *SE*

October 12, 1977 - Trial Cont.

October 13, 1977 - Trial Cont; jurors excused until Wednesday, October
19, 1977 at 9:30 AM

October 14, 1977 - Trial Cont. Atty's present to review requests to change and
other legal matters; deft's motion to dismiss Count 38 (decision
previously reserved) denied Ward J; deft's renewed motion to
dismiss Counts 1-37 denied Ward J.

D

77 CRIM 0553
Form No. USA-33a-274 (Ed. 9-25-58)

United States District Court
SOUTHERN DISTRICT OF NEW YORK
THE UNITED STATES OF AMERICA

vs.

JAMES C. THWEATT,

Defendant.

INDICTMENT

77 Cr.

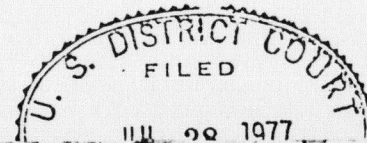
Title 18, United States Code,
Sections 1001 and 2, 641 and 2.

ROBERT B. FISKE, JR.

United States Attorney.

A TRUE BILL

Joseph Feldman
Foreman.



Indict. Filed 4/28/77 JUDGE WARD:
Def. Thweatt and atty Robert B. Fiske, Jr.
Docket. Deft request for atty.
and Thweatt Judge. Deft. request for
def. to attend, as can be seen
in Thweatt for all purposes.
Deft. request to have atty. removed
as soon as possible. Deft. release
on his own recognizance, ordered
8/22/77
Guill. #18

8/22/77
P.T.C. held.
D Trial date set for Monday, September 26, 1977,
at 10:00 AM in Courtroom 35. R.O.K. cont.
Ward. #18

9/15/77
P.T.C. held.